United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL WITH PROOF OF SERVICE

76-5003

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

In re:

LOIS ADLMAN,

BANKRUPT,

BANK OF PENNSYLVANIA,

Plaintiff-Appellee,

-against-

LOIS ADLMAN,

Defendant-Appellant.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX

UNITED STATES COURT OF APPEALS
FILED
MAR 5 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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(5273)

COUNSEL PRESS, INC., 55 West 42nd Street, New York, N.Y. 10036 • PE 6-8460

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BEST COPY AVAILABLE

C PLATT, J. Docket Entries

NAME OF BANKRUPT/DEBTOR
ADLMAN, Lois
Last First Middle

S.S.#078-22-6437

ADDRESS OF BANKRUPT/DEBTOR (Number and Street)
March Lane,

CITY SANDS POINT ZONE 11050 COUNTY NASSAU STATE N.Y.

DIST. NO. 207 | DIV NO. 1 | DOCKET NO. 74-B-385

CHAPTER OR SECTION

DATE PETITION FILED 3/22/74

DATE CLOSED

DISCHARGE: Granted / Denied / Waived or not applied for

DATE DISCHARGED

CHECK IF: [X] Voluntary; [ ] Involuntary; [ ] Fee paid in installments; [ ] Corporation

OCCUPATION (Check one): [ ] Farmer; [ ] Employee; [ ] Professional; [X] Other (Non-business); [ ] Merchant; [ ] Manufacturer; [ ] Other (Business)

PETITION DISMISSED? [ ] YES | DATE DISMISSED | CHAPTER UNDER WHICH CASE WAS PENDING WHEN DISMISSED

NAME OF JUDGE

NAME OF REFEREE BORIS RADOYEVICH

NO ASSET CASES ONLY CLAIMS AS SCHEDULED

TOTAL	PRIORITY	SECURED	UNSECURED
$	$	$	$

	NAMES AND ADDRESSES
ATTORNEY FOR BANKRUPT OR DEBTOR	GOLDMAN, HOROWITZ & CHERNO, 390 E. Old Country Rd., Post Office Box 630, Mineola, N.Y., 11501(516-742-5505)
ATTORNEY FOR PETITIONING CREDITORS	
RECEIVER	
ATTORNEY FOR RECEIVER	
TRUSTEE	
ATTORNEY FOR TRUSTEE	

CHANGES OF PRINCIPALS

DATE	PROCEEDINGS
3/22/74	Petition, Schedules and Statement of Affairs filed. (1) Referred to Bankruptcy Judge Boris Radoyevich. (Orig. & copy sent to Bank. J. Radoyevich - 3/22/74)
9/25/75	Notice of Appeal to District Court from order of Radoyevich, B.J., dated 9/3/75 filed. ASSIGNED TO: PLATT, J. (2)
10/24/75	Additional papers to be affixed to papers to Appeal received from Radoyevich,B.J. and forwarded to office of Platt,J.
11/14/75	Memorandum of Law submitted on Behalf of Bank of Pennsylvania, Plaintiff-Respondent filed. (Crowe,McCoy,Agoglia, & Zweibel, Atys.for Bank) (3)

[ ] CHECK THIS BOX IF FILING FEES WERE PAID IN FULL AT TIME OF FILING

Docket Entries

12/30/75	Memorandum of Law filed by Goldman, Horowitz & Cherno, Attorneys for Bankrupt-Appellant. (4)
12/30/75	By Platt, J. - Memorandum and Order filed. Ordered that the Judgment of Bankruptcy Judge Radoyevich denying the defendant a discharge in Bankruptcy must be and the same hereby is Affirmed.(Papers sent back to Bk.J.Radoyevich with copy of this decision) (5) (copies sent to a.c. Bankr.)
1/22/76	Notice of Appeal filed.(Goldman,Horowitz & Cherno,Esqs. Attys. for Bankrupt.) (from above order of Platt,J. of 12/30/75.(cpy sent to U.S.C.C.A.) JN- (6)

Notice of Appeal

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

In re:

LOIS ADLMAN,

Bankrupt.

BANK OF PENNSYLVANIA,

Plaintiff,

-against-

LOIS ADLMAN,

Defendant-Appellant.

----------x

NOTICE OF APPEAL

File No. 74 B 386

Notice is hereby given that Lois Adlman, the Bankrupt and defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order made on December 30, 1975, in this action and entered in the Clerk's office on December 30, 1975, affirming a judgment of the Bankruptcy Court (Hon. Boris Radoyevich, Bankruptcy Judge) denying the defendant a discharge in bankruptcy.

Dated: Mineola, New York
January 21, 1976

GOLDMAN, HOROWITZ & CHERNO

By: Jacob M. Goldman
JACOB M. GOLDMAN

Attorneys for Bankrupt and Defendant
P.O. Box 630
390 East Old Country Road
Mineola, New York 11501
516 742-5505

Memorandum and Order of the District Court
Appealed From

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

In re:

LOIS ADLMAN,

Bankrupt.

No. 74 B 386

BANK OF PENNSYLVANIA,

Plaintiff,

-against-

LOIS ADLMAN,

Defendant-Appellant.

MEMORANDUM AND ORDER

December 30, 1975

- -x

PLATT, D.J.

Lois Adlman appeals from a judgment of the Bankruptcy Court (Hon. Boris Radoyevich, Bankruptcy Judge) denying the defendant a discharge in bankruptcy on the ground that the "defendant did, at a time subsequent to the first day of the twelve months preceding the filing of the petition in bankruptcy, transfer her real property, and repay loans on policies of insurance, with the intent to hinder, delay or defraud her creditors, all as specified in Section 14c(4) of the Bankruptcy Act."

The referenced transfer of real property was a sale to David and Dorothy Adlman, aunt and uncle of the defendant's husband, Edward G. Adlman, on October 12, 1973 and a simultaneous leaseback of such property to the defendant and her husband. Realized from such sale was approximately $60,000 in cash which the defendant used

almost immediately to repay loans aggregating approximately $52,653.40 on life insurance policies on defendant's husband's life, owned by her or in which she was named as beneficiary and having a face value of approximately $275,000, and to pay premiums, some in advance of their due dates, on such policies amounting to $7,763.22; such policies being exempt property under Section 166 of the New York Insurance Law.

The Bankruptcy Judge could well have and apparently did infer the requisite intent from such facts along with all of the other evidence in the case.

This Court must "accept the referee's findings of fact unless they are clearly erroneous and (must) give due regard to the opportunity of the referee to judge the credibility of the witnesses." Bankruptcy Rule 810.

On the basis of the findings of fact, conclusions of law and memorandum dated August 14, 1975 of the said Hon. Boris Radoyevich, the judgment of that Court denying the defendant a discharge in bankruptcy must be and the same hereby is affirmed.

SO ORDERED.

Thomas C. Platt

U.S.D.J.

Complaint Objecting to Discharge

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK IN BANKRUPTCY
- -X

NO. 74-B-386

IN THE MATTER OF

LOIS ADLMAN,

COMPLAINT OBJECTING TO DISCHARGE

Bankrupt
- -X

TO: HONORABLE BORIS RADOVEVICH, Bankruptcy Judge:

The Bank of Pennsylvania of Reading, in the County of Berks, State of Pennsylvania, a creditor of the Estate of Lois Adlman, the above named bankrupt, having examined into the acts and conduct of said Lois Adlman, bankrupt, and being satisfied that probable grounds exist for the denial of the discharge of said bankrupt and that the public interest so warrants, does hereby oppose the granting to said bankrupt of a discharge from her debts, and specifies the following as grounds of objections:

FIRST COUNT

FIRST: On or about October 13, 1972, the bankrupt and her husband, while engaged as partners in the Leesport Gardens Company, executed a continuing suretyship agreement with the creditor herein, whereby bankrupt and her husband would act as surety for the indebtedness and financial liabilities of the principal debtor, Leesport Gardens Company, for principal loan amounts not in excess of $25,000.00, a copy of which is attached hereto and marked "Schedule A".

SECOND: Bankrupt and her husband are indebted to the creditor herein on a certain note dated June 14, 1973, payment due December 31, 1973, of which creditor herein is the holder and the bankrupt's husband the maker, in the sum of $25,000.00; said loan extended to the Leesport Gardens Company, a copy of which is attached hereto and marked "Schedule B", and upon which bankrupt is indebted to the creditor herein, in the sum of $25,000.00, together with interest at the rate of 8% per annum on the total principal from June 14, 1973.

WHEREFORE, creditor herein demands judgment against the bankrupt herein, in the sum of $25,000.00, together with interest at 8% per annum, from June 14, 1973 and costs of suit on the First Count.

SECOND COUNT

FIRST: Creditor herein repeats and realleges the paragraphs contained in the First Count.

SECOND: Upon information and belief, prior to and as a condition precedent to the acceptance by the creditor herein, of the suretyship contract above mentioned and the granting of the above loan as evidenced by the above mentioned note, the bankrupt's husband, on October 5, 1972, with the express consent and knowledge of the bankrupt herein, delivered a written joint

financial statement representing the assets and liabilities of the bankrupt and her husband, dated May 1, 1972, to a duly authorized agent of the creditor herein, a copy of which is attached hereto and marked "Schedule C".

THIRD: Upon information and belief, prior to and as a condition precedent to the granting of the above mentioned loan as evidenced by the note above mentioned extended by the creditor herein in reliance upon the suretyship contract herein, the bankrupt's husband on June 11, 1973 with the express consent and knowledge of the bankrupt herein, delivered a written joint financial statement representing the assets and liabilities of the bankrupt and her husband, dated March 15, 1973, to a duly authorized agent of the creditor herein, a copy of which is attached hereto and marked "Schedule D".

FOURTH: Upon information and belief, at the times bankrupt supplied the above mentioned financial statements, she and her husband were indebted to other creditors which fact bankrupt and her husband deliberately and wilfully omitted from the above mentioned statements, for the purpose of fraudulently procuring the above mentioned loan from the creditor herein.

FIFTH: Upon information and belief, at the times bankrupt supplied the above mentioned financial statements, the valuation of joint assets so stated was increased as to be excessively disproportionate and false as to the actual market value of those assets. Which fact bankrupt and her husband wilfully disregarded in the production of the statements for the purpose of fraudulently procuring the loans herein from the creditor.

SIXTH: Upon information and belief, at the times bankrupt supplied the above mentioned financial statements, the stated joint indebtedness and financial liability figure was decreased as to be excessively disproportionate and false with relation to the actual joint financial indebtedness existent, which fact bankrupt and her husband deliberately and wilfully disregarded in the production of the statements, for the purpose of fraudulently procuring the loan above mentioned from the creditor herein.

SEVENTH: Bankrupt and her husband knew or had reason to know, that creditor herein would rely upon said financial statements, and the statements were delivered for the purpose of said creditor relying thereon.

EIGHTH: Creditor herein, not knowing the truth regarding them, but believing that said financial statements were true, relied upon the said statements and has been damaged thereby to the extent of the entire principal amount due on the above mentioned note, plus interest thereon.

Complaint Objecting to Discharge

NINTH: Bankrupt herein, on or about March 22, 1974, was adjudged a bankrupt in the United States District Court Of The Eastern District Of New York.

TENTH: The obligation incurred as described herein, is not the proper subject matter for a discharge in bankruptcy.

THIRD COUNT

FIRST: Creditor herein repeats and realleges the paragraphs contained in Counts First and Second.

SECOND: At the time the bankrupt and her husband engaged in the conspiracy to fraudulently induce the creditor herein to write the loan above mentioned, the bankrupt was the owner in fee simple of certain premises located at March Lane, Sands Point, Nassau County, New York State, more particularly bounded and described as follows:

"BEGINNING AT A point on the Northerly side of March Lane where the same is intersected by the division line between Lots Nos. 27 and 28, in Block 96 as shown on said mentioned map;

RUNNING THENCE in a Westerly direction along the Northerly side of March Lane the following three (3) courses and distances: 1. on a curve to the left having a radius of 340.00 feet, an arc of 25 degrees 27 minutes 51 seconds a distance of 151.11 feet, 2. on a curve to the right having a radius of 15.00 feet, an arc of 71 degrees 29 minutes 28 seconds a distance of 18.72 feet, 3. on a curve to the left having a radius of 50.00 feet, an arc of 99 degrees 20 minutes 40 seconds a distance of 86.69 feet, to a point on the Northerly side of Lot No. 26 as shown on said map,

THENCE along the Northerly side of said Lot No. 26 in a Westerly direction North 62 degrees 24 minutes 23 seconds West 181.86 feet to a point;

THENCE North 35 degrees 48 minutes 39 seconds East 27.50 feet;

THENCE North 36 degrees 17 minutes 25 seconds East 397.43 feet to the Southwesterly side of Lot No. 28 as shown on said map;

THENCE RUNNING Southerly along the Southwesterly side of Lot No. 28 as shown on said map, South 20 degrees 54 minutes 03 seconds East 417.99 feet to the Northerly side of March Lane and the point or place of BEGINNING.

As an appurtenance to the above described premises there is also hereby conveyed to the party of the second part an undivided one-eighteenth (1/18th) interest, as tenants-in-common with others, in the following described premises:

BEGINNING at the southeasterly corner of premises herein described, said point being distant the following eight courses and distances from a point where the southerly side of a private 40 foot right of way (Hoffstot's Lane) intersects the easterly side of Middle Neck Road:

(1) Easterly along the southerly side of said private 40 foot right of way (Hoffstot's Lane) 932.54 feet to a point where the southerly side of said private 40 foot right of way (Hoffstot's Lane) intersects the easterly side of said private 40 foot right of way (Hoffstot's Lane);

(2) along the easterly side of said private 40 foot right of way (Hoffstot's Lane) north 16 degrees 13 minutes 50 seconds west 42.67 feet to the southeasterly side of a 50 foot right of way;

(3) along the southeasterly side of said 50 foot right of way north 60 degrees 41 minutes 10 seconds east 268.65 feet to a point;

(4) along the southerly side of 50 foot right of way north 76 degrees 34 minutes 10 seconds east 96.34 feet to a point;

(5) along the southerly side of said 50 foot right of way south 75 degrees 47 minutes 50 seconds east 216.42 feet;

(6) North 5 degrees 36 minutes 10 seconds east 102.97 feet;

(7) North 54 degrees 33 minutes 50 seconds east 110.81 feet;

(8) North 35 degrees 19 minutes 10 seconds west 593.35 feet to the point or place of beginning, and from said point or place of the beginning;

RUNNING THENCE south 67 degrees 41 minutes 40 seconds west 187.68 feet;

THENCE north 35 degrees 19 minutes 10 seconds west 140 feet to the southerly side of the mean high water line of Long Island Sound;
THENCE along the mean high water line of Long Island Sound the following two courses and distances:
(1) North 87 degrees 24 minutes 10 seconds east 67.74 feet;
(2) North 72 degrees 34 minutes 40 seconds east 132.26 feet;
THENCE south 35 degrees 19 minutes 10 seconds east 105 feet to the point or place of beginning."

THIRD: Upon information and belief, on or about October 12, 1973, the bankrupt conveyed the premises above mentioned to her husband's uncle and aunt, David Adlman and Dorothy Adlman, by a deed of conveyance dated October 12, 1973 and recorded in the office of the Clerk of Nassau County, October 16, 1973, in Liber 8605 of Conveyance at Page 102, a copy of which is attached and marked "Schedule E".

Complaint Objecting to Discharge

FOURTH: Upon information and belief, subsequent to the making of the conveyance herein set forth, the bankrupt and her husband continued and to this day, still continue to reside in the premises.

FIFTH: At the time of making the conveyance herein set forth, the bankrupt and her husband had incurred and intended to further incur debts beyond their ability to pay as such debts matured in that among other things, they intended to default upon the suretyship contract they had entered with the creditor herein and thus become liable to the claimant for the amount of the loan received.

SIXTH: The conveyance was made with the purpose and intent of hindering, delaying and defrauding the creditors of the bankrupt and her husband, and in particular, to hinder and defraud the creditor herein.

SEVENTH: Upon information and belief, the transfer and conveyance was without valid consideration therefor and David Adlman and Dorothy Adlman accepted the transfer with knowledge of the wrongful and fraudulent intent and purpose alleged herein.

EIGHTH: Upon information and belief, the sums purportedly paid to the bankrupt for the transfer of said property were used to pay the debts of the bankrupt and her husband to the prejudice

of the creditor herein.

NINTH: The obligations incurred as described herein, are not the proper subject matter of a discharge in bankruptcy.

WHEREFORE, your claimant prays that bankrupt be denied a discharge in bankruptcy and be further required to make payment in full on the loan and interest thereon as yet unpaid, and for such other and further relief as may be just and equitable.

Dated: Mineola, N. Y.

November 27, 1974

CROWE, McCOY, AGOGLIA & ZWEIBEL
Attorneys for Creditor

By: S/S Harold V. McCoy
Member of the Firm
80 East Old Country Road
Mineola, N. Y. 11501

Schedule A to Complaint - Suretyship Agreement

In Consideration of One Dollar paid to the Undersigned, the receipt whereof is hereby acknowledged, and of such loans, discounts, advances or credits as have been made, or may be made by the BANK OF PENNSYLVANIA, Reading, Pennsylvania, (hereinafter called the Bank), to LEESPORT GRAPHICS COMPANY

(hereinafter called the Principal Debtor), the Undersigned hereby warrants and becomes surety to the Bank, its Successors, Endorsees, or Assigns, for the prompt payment at maturity of all loans, discounts, advances and credits and any renewals thereof, which the Bank has made, or may make to the Principal Debtor, and hereby assents to all the terms and conditions made or to be made with the Bank by the Principal Debtor, and consents that any and all securities pledged as collateral by the Principal Debtor may be exchanged or surrendered from time to time, and that all or part of any loans, discounts, advances or credits may be renewed or payment thereof extended without notice to or further assent from the Undersigned, who will remain bound upon this Agreement notwithstanding any change, surrender renewal or extension.

AND the Undersigned further agrees to pay to the Bank all costs and expenses (including counsel fees) which may be incurred in the collecting or undertaking to collect the indebtedness or liability of the Principal Debtor or of the Undersigned, or any of them.

PROVIDED, HOWEVER, that the aggregate amount for which the Undersigned shall be liable hereunder at any one time shall not exceed the sum of XXXXXX DOLLARS ($XXXXXX), and in addition to that sum any interest, costs and expenses which may accrue, or be incurred in addition thereto on account of the indebtedness or liability of the Principal Debtor or of the Undersigned, or any of them.

IT IS UNDERSTOOD AND AGREED by the Undersigned that the Bank may advance and discount any amount beyond the said sum for the Principal Debtor, and that no payment which may be received from the Principal Debtor, or on account of any indebtedness or liability of the Principal Debtor to the Bank, shall be applied in reduction of the liability hereunder until after the payment and satisfaction of any and all indebtedness or liability of the Principal Debtor beyond the said amount. If at any time any sum owing from the Principal Debtor to the Bank shall not be paid when payable, the whole amount then owing from the Principal Debtor shall be deemed for the purpose of this Instrument, and the liability created hereby, as forthwith payable, and the Bank may recover from the Undersigned the whole amount of the liability hereunder, or so much thereof as may be owing.

IT IS ALSO UNDERSTOOD AND AGREED that the Bank shall have a lien upon any and all funds, moneys, balances, stocks, bonds, notes and other property at any time in its hands belonging to the Undersigned, or any of them, as security for this undertaking, with the right on the part of the Bank, in case of any default on the part of the Undersigned, to sell, assign and deliver the whole, or any part of such securities, or assets at any Broker's Board, or at public or private sale at the option of the Bank, without advertisement or notice to the Undersigned, and with the right on the part of the Bank to become the purchaser thereof, or of any part thereof, at such sale or sales, freed and discharged of any and all equity of redemption.

IT IS UNDERSTOOD AND AGREED that in case this Agreement is preceded or followed by another Contract of Suretyship, the two or more Agreements are to be considered as cumulative and covering the total sum they collectively specify.

THIS AGREEMENT is to be a continuing one and binding on the Undersigned, his heirs, executors and administrators or successors, until written notice has been given to the Bank of his intention to terminate the same, in which event the party signatory by whom such notice has been given shall not be liable hereunder for the payment of any indebtedness of the Principal Debtor to the said Bank which has arisen by reason of any loans, discounts, credits or advances made to the Principal Debtor by the Bank after the receipt by it of said notice.

Schedule A to Complaint - Suretyship Agreement

IT IS ALSO FURTHER UNDERSTOOD AND AGREED by the Undersigned that the Bank is not required to give notice to the Undersigned of any default of any character whatsoever on the part of the Debtor. The undersigned hereby authorizes the prothonotary or clerk or any attorney of any court of record to appear for and confess judgment against the undersigned in favor of the holder hereof at any time for the above sum or the amount which from the face hereof may appear to be due hereon with interest as aforesaid together with costs of suit and 15% attorney's commission for collection costs, waiving inquisition, stay of execution, errors, appeals, and the benefit of all exemption laws now or hereafter enacted, and agreeing to condemnation and the sale of real estate on a writ of fieri facias. If the undersigned are more than one, the liability of the undersigned is joint and several.

This instrument embodies the whole agreement of the parties; there are no customs, promises, terms, conditions or obligations referring to the subject matter and no inducements leading to the execution hereof, other than contained herein; no waiver of any breach of any term of this agreement shall be construed as a waiver of any subsequent breach of that term or of any other term of the same or different nature; and there may be no modification of this agreement except in writing executed with the same formalities as this instrument and executed in addition by, and on behalf of said Bank of Pennsylvania.

WHENEVER herein the masculine pronoun is used, it shall be taken to mean and comprehend a person, male or female, firm or corporation who or which is a party signatory hereto. If this instrument is signed by two or more parties, it shall be the joint and several agreement of such parties.

WITNESS my hand and seal this 13 day of OCTOBER A. D. 1972

SIGNED AND SEALED
in the presence of:

John E. Farmer

ANTHONY DILEONARDI
NOTARY PUBLIC, State of New York
No. 31-4602275
Qualified in Nassau County
Commission Expires March 30, 1974

Edward C. Coleman

Lois Coleman

BOTH RESIDING AT
MARCH LANE
SANDS POINT N.Y. 11050

The undersigned acknowledges that he has received notice from the Bank of Pennsylvania of its acceptance of the foregoing Contract of Suretyship, and of its intention to act in reliance thereon.

DATED _____ A. D. 19

BANK OF PENNSYLVANIA
READING, PENNSYLVANIA

Schedule B to Complaint - Promissory Note

$25,000.00 — June 14, 1973

On Demand after date I/We (if more than one, each of us jointly and severally) promise to pay to the order of

BANK OF PENNSYLVANIA

Twenty Five Thousand and 00/ DOLLARS

without defalcation for value received with interest at ____% per annum at said Bank, 50 N. 5th St., Reading, Pa. or at any other office of the Bank. This rate of interest may be varied from time to time by notice to maker.

Debtor/debtors agree that any collateral security heretofore or hereafter deposited with the creditor of this contract and any other property of the debtor debtors in the creditor's possession shall be applicable to secure the payment of this or any past or future matured or unmatured liabilities of the debtor debtors to the creditor, and all such property shall stand as one general continuing collateral security made from the collateral for the rest.

The undersigned hereby authorizes and empowers the prothonotary or clerk or any attorney of any court of record to appear for and confess judgment against the undersigned in favor of the holder hereof at any time for the above sum or the amount which from the face hereof may appear to be due hereon with interest as aforesaid together with costs of suit and 15% attorney's commission for collection costs, with or without declaration, waiving inquisition, stay of execution, errors, appeals, and the benefit of all exemption laws now or hereafter enacted, and agreeing to condemnation and the sale of real estate, on a writ of execution. If the undersigned are more than one, the liability of the undersigned is joint and several.

(INDIVIDUALS SIGN BELOW)

_____ (SEAL)
(Name)

_____ (SEAL)
(Name)

_____ (SEAL)
(Name)

_____ (SEAL)
(Name)

Address: _____

(CORPORATIONS OR PARTNERSHIPS SIGN BELOW)

LEESPORT GARDENS COMPANY

By Edward C Adlman Gen Partner (SEAL)
(Name of Corporation or Partnership)

Edward C. Adlman, General Partner

By _____ (SEAL)
(Name & Title)

By _____ (SEAL)
(Name & Title)

By _____ (SEAL)
(Name & Title)

Address: c/o EDWARD C. ADLMAN 170 GREAT BECK RD., BROAT BECK, N.Y. 11021

(FOR BOOKKEEPING PURPOSES ONLY)

NOTE # 2611-
APR 8%
CODE 13
Z _____ NON Z X

OFFICE 02
L. O. # 126
APPROVAL AUTHORITY 126
DATE PROCEEDS ADVANCED 6/14/73

BILLING INSTRUCTIONS

17,500 IN 90 DAYS.
INT. MONTHLY.
IN FULL END OF YEAR.

103

WJ

BEST COPY AVAILABLE

Schedule C to Complaint - Financial Statement (1972)

EDWARD C. & LOIS ADLMAN

MARCH LANE, SANDS POINT, N.Y. 11050

PERSONAL FINANCIAL STATEMENT - MAY 1, 1972

(Unaudited)

Exhibit No. Creditors Exhibit
Date 10/31/72

ASSETS

Current Assets:			
Cash in Checking Accounts	$ 6,441		
Cash in Savings Accounts	4,683	$ 11,124	
Commissions Receivable		46,000	
Cash Surrender Value of Life Insurance		18,000	
Stocks and Bonds - at market value		56,000	
Total Current Assets			$ 131,124
Real Estate and Mortgages Receivable:			
Mortgages Receivable		$162,000	
Real Estate:			
Equity in Reading, Pa. apartments under construction	$215,000		
50 Acre Tract PRD zoned property in Leesport, Pa. at market value	250,000	465,000	
Personal residence - Sands Point, N.Y. - at cost	$167,000		
Less: Mortgage Payable	60,000	107,000	
Total Real Estate and Mortgages Receivable			734,000
Other Assets:			
Investment in Caswear of N.Y., Inc. at cost		$ 30,000	
Household Furnishings		120,000	
Total Other Assets			150,000
TOTAL ASSETS			$1,015,124

LIABILITIES AND NET WORTH

Liabilities:			
Loans Payable:			
Security National Bank	$ 6,000		
Chelsea National Bank	8,000		
Chase Manhattan Bank	3,230		
Bank of Commerce	5,000		
Manufacturers Hanover Trust Co.	45,000	$ 67,230	
Mortgage Payable - Leesport, Pa. Property		62,500	
Accrued Expenses and Taxes		15,000	
Total Liabilities			$ 144,730
Net Worth			870,394
TOTAL LIABILITIES AND NET WORTH			$1,015,124

Note: The above personal financial statement has been prepared from information submitted without audit.

Respectfully submitted,

NEIL ROTH COMPANY
Certified Public Accountants

Schedule D to Complaint - Financial Statement (1973)

EDWARD C. & LOIS ADLMAN

MARCH LANE, SANDS POINT, N. Y. 11050

PERSONAL FINANCIAL STATEMENT - MARCH 15, 1973

(Unaudited)

Credelow Exhibit No. 2 for Id. Date 10/31/74

ASSETS

Current Assets:		
Cash in banks	$ 30,000	
Prepaid interest - held in escrow	82,500	
Commissions receivable	16,000	
Cash surrender value of life insurance	19,800	
Stocks and bonds - at market value	26,000	
Total Current Assets		$ 174,300
Mortgages receivable		92,000
Real Estate:		
151.68 acres, Spring Township, Reading, Pa.:		
Appraisal value	$332,200	
70.7 acres, Leesport, Pa. PRD zoned:		
Market value - 1/2 interest	293,000	
County Club Apartments, Reading, Pa.:		
Under construction - equity value	225,000	
Personal residence, Sands Point, N. Y. - at cost	167,000	
Total Real Estate		1,017,200
Household Furnishings		130,000
TOTAL ASSETS		$1,413,500

LIABILITIES AND NET WORTH

Liabilities:		
Loans Payable:		
Security National Bank	$ 4,200	
Chelsea National Bank	8,000	
Chase Manhattan Bank	6,240	
Bank of Commerce	3,500	
First Federal Savings & Loan	4,600	
Long Island National Bank	12,000	
Manufacturers Hanover Trust Co.	25,000	
Hempstead Bank	25,000	
Total Loans Payable		$ 88,540
Mortgages Payable:		
Spring Township property	$250,000	
Leesport, Pa. property (1/2 interest)	26,500	
Personal residence	59,360	
Total Mortgages Payable		336,360
Accrued expenses and taxes		18,000
Total Liabilities		$ 442,900
Net Worth		970,600
TOTAL LIABILITIES AND NET WORTH		$1,413,500

NEIL ROTH COMPANY
Certified Public Accountants

Read by hand of Ed. Adlman 6/10/73

BEST COPY AVAILABLE

Deeds

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

THIS INDENTURE, made the 12th day of October nineteen Hundred and Seventy-three

BETWEEN LOIS ADLMAN, residing at March Lane, Sands Point, New York 11050,

party of the first part, and DAVID ADLMAN and DOROTHY ADLMAN, his wife, residing at 2 Harbor Way, Kings Point, New York

party of the second part,

WITNESSETH, that the party of the first part, in consideration of TEN and no/100 ($10.00) dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

PARCEL I

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Incorporated Village of Sands Point, Town of North Hempstead, County of Nassau and State of New York, known and designated as Lot No. 27 in Block 96 on a certain map entitled, "Map of Miramar at Sands Point, situated at Town of North Hempstead, Inc. Village of Sands Point, Nassau County, New York, dated March 30, 1959, Surveyed by Charles E. Ward, Inc. Engineers and Surveyors, and filed in the Nassau County Clerk's Office on December 23, 1959 as Map No. 8268, bounded and described according to said map as follows:

BEGINNING AT A point on the Northerly side of March Lane where the same is intersected by the division line between Lots Nos. 27 and 28, in Block 96 as shown on said mentioned map;

RUNNING THENCE in a Westerly direction along the Northerly side of March Lane the following three (3) courses and distances: 1. on a curve to the left having a radius of 340.00 feet, an arc of 25 degrees 27 minutes 51 seconds a distance of 151.11 feet, 2. on a curve to the right having a radius of 15.00 feet, an arc of 71 degrees 29 minutes 28 seconds a distance of 18.72 feet, 3. on a curve to the left having a radius of 50.00 feet, an arc of 99 degrees 20 minutes 40 seconds a distance of 86.69 feet, to a point on the Northerly side of Lot No. 26 as shown on said map;

THENCE along the Northerly side of said Lot No. 26 in a Westerly direction North 62 degrees 24 minutes 23 seconds West 181.86 feet to a point;

THENCE North 35 degrees 48 minutes 09 seconds East 27.50 feet;

THENCE North 36 degrees 17 minutes 25 seconds East 397.43 feet to the Southwesterly side of Lot No. 28 as shown on said map;

THENCE RUNNING Southerly along the Southwesterly side of Lot No. 28 as shown on said map, South 20 degrees 54 minutes 03 seconds East 417.99 feet to the Northerly side of March Lane and the point or place of BEGINNING.

8805 166

Schedule E to Complaint - Deed

As an appurtenance to the above described premises there is also hereby conveyed to the party of the second part an undivided one-eighth (1/8th) interest, as tenants-in-common with others, in the following described premises:

BEGINNING at the southeasterly corner of premises hereinafter described, said point being distant the following eight courses and distances from a point where the southerly side of a private 40 foot right of way (Hoffstot's Lane) intersects the easterly side of Middle Neck Road:

(1) Easterly along the southerly side of said private 40 foot right of way (Hoffstot's Lane) 903.54 feet to a point where the southerly side of said private 40 foot right of way (Hoffstot's Lane) intersects the easterly side of said private 40 foot right of way (Hoffstot's Lane);
(2) along the easterly side of said private 40 foot right of way (Hoffstot's lane) north 15 degrees 13 minutes 50 seconds east 42.87 feet to the southeasterly side of a 50 foot right of way;
(3) along the southeasterly side of said 50 foot right of way north 60 degrees 41 minutes 10 seconds east 260.65 feet to a point;
(4) along the southerly side of 50 foot right of way north 75 degrees 34 minutes 10 seconds east 96.34 feet to a point;
(5) along the southerly side of said 50 foot right of way south 75 degrees 47 minutes 50 seconds east 216.42 feet;
(6) North 5 degrees 26 minutes 10 seconds east 102.07 feet;
(7) North 54 degrees 33 minutes 50 seconds east 110.81 feet;
(8) North 35 degrees 19 minutes 10 seconds west 503.35 feet to the point or place of beginning, and from said point or place of beginning

RUNNING THENCE south 87 degrees 41 minutes 40 seconds west 197.08 feet;
THENCE north 35 degrees 19 minutes 10 seconds west 140 feet to the southerly side of the mean high water line of Long Island Sound;
THENCE along the mean high water line of Long Island Sound the following two courses and distances;
(1) North 87 degrees 24 minutes 10 seconds east 67.74 feet;
(2) North 72 degrees 34 minutes 40 seconds east 132.26 feet;
THENCE south 35 degrees 19 minutes 10 seconds east 105 feet to the point or place of beginning.

TOGETHER WITH an easement for ingress and egress to and from Middle Neck Road on, over and along said private 40 foot right of way (Hoffstot's Lane) leading to lands of Sands Point Realty Company (formerly of Hoffstot), as shown in survey of Bertram F. Allen, dated August 9, 1935 (recorded with deed from Charles B. Sloane, et al, to George Vanderbilt, dated September 7, 1935, recorded L1347 Cp.454).

The party of the second part shall at all times be responsible for their proportionate share of the taxes and of maintaining the said above described waterfront premises and provided further that the party of the second part, their heirs, assigns, and grantees, shall at all times refrain and be prohibited from parking any vehicle on said Parcel II.

Reserving unto the party of the first part the right and privilege of granting unto EDWARD A. SHAPIRO AND PAUL R. SHAPIRO, officers of the party of the first part, their respective heirs and assigns, the right and privilege of entering upon and using the facilities of the above described Parcel II.

SUBJECT TO: Right of way in following deeds recorded in Queens County: Liber 99, Cp.284; Liber 578, Cp.428; Liber 722, Cp.13; and Liber 914, Cp.395.

SUBJECT TO: Rights and easements of others than the parties hereto, in, to and over that part of the premises above described in Parcel II that lies in the bed of said private 40 foot right of way, as shown on said surveys of Bertram F. Allen.

SUBJECT TO: Rights of others than the parties thereto, if any, in, to and over the above described Parcel II to use the same for bathing and other purposes.

Purchaser hereby takes title subject to a first mortgage held by the First Federal Savings and Loan Association of Port Washington in the original principal sum of $50,000 dated June 2, 1972 and recorded in the Office of the Clerk of the County of Nassau on June 5, 1973 in Liber 9064 of Mortgages at page 191, which mortgage

8005 No 103

Schedule E to Complaint - Deed

provides for interest at the rate of 7-1/2% per annum, and which has an unpaid balance as of the date hereof of $

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof.

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been incumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF

LOIS ADLMAN

LIBER 8605 PAGE 104

Schedule E to Complaint - Deed

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

On the 3 day of October 1973, before me personally came LOIS ADLMAN,

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that she executed the same.

Notary Public

CONSTANCE RITCHLIN
Notary Public, State of New York
No. 31-3472250
Qualified in New York County
Commission Expires March 30, 1975

STATE OF NEW YORK, COUNTY OF ss.:

On the day of 19 , before me personally came to me known, who, being by me duly sworn, did depose and say that he resides at No.

that he is the of the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

STATE OF NEW YORK, COUNTY OF

On the day of 19 , before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF NEW YORK, COUNTY OF ss.:

On the day of 19 , before me personally came

the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No.

that he knows

to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed his name as witness thereto.

Bargain and Sale With
WITHOUT COVENANT AGAINST GRANTOR'S ACTS

TITLE NO. A 499775

LOIS ADLMAN

TO

DAVID ADLMAN and DOROTHY ADLMAN, his wife.

SECTION 47
BLOCK 95
LOT 27
COUNTY OR TOWN Nassau

STANDARD FORM OF NEW YORK BOARD OF TITLE UNDERWRITERS
Distributed by
THE TITLE GUARANTEE COMPANY

Recorded At Request of The Title Guarantee Company
RETURN BY MAIL TO:

ARNOLD C. ABRAMOWITZ, ESQ.
Blumberg, Singer, Ross,
Gottesman & Gordon
245 Park Avenue
New York, N.Y. Zip No. 10017

RECORDED
Oct 16 2:53 PM '73
HAROLD W. MCGINLEY
COUNTY CLERK
NASSAU COUNTY

X 511 45493

THE TITLE AND GUARANTY COMPANY

Liber 8005 Page 105

Answer to Complaint

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

In re: LOIS ADLMAN,
Bankrupt

BANK OF PENNSYLVANIA,
Plaintiff
v.
LOIS ADLMAN,
Defendant
No. 74 B 386
----------X

LOIS ADLMAN, by GOLDMAN, HOROWITZ & CHERNO, Esqs., her attorneys answering the complaint of the BANK OF PENNSYLVANIA alleges:

1. Defendant admits the allegations contained in paragraphs first and second of the First Count of the complaint herein and alleges that the debt and obligation described therein is dischargeable in these proceedings.

2. Defendant denies the allegations contained in paragraph first of the Second Count except as herein before admitted.

3. Defendant denies the allegations contained in paragraph second of the Second Count of the complaint herein.

4. Defendant denies the allegations contained in paragraph third of the Second Count, except Defendant admits delivery of the statement described as "Schedule D" of the complaint herein by Defendant's husband, and alleges that Plaintiff was informed by Defendant's husband that the valuations set forth in the said statement reflected book value and accountant's estimate of value

and not the values as of the date of the delivery of the said statement.

5. Defendant denies the allegations contained in paragraph fourth, fifth, sixth, seventh, eighth and tenth of the Second Count of the complaint herein.

6. Defendant denies the allegations contained in paragraph first of the Third Count of the complaint herein except as the same has been heretofore admitted.

7. Defendant denies the allegations contained in paragraph second of the Third Count, except admits ownership as tenant by the entirety of the real property described therein.

8. Defendant denies the allegations contained in paragraphs fifth, sixth, seventh, eighth and ninth of the Third Count of the complaint herein.

WHEREFORE, Defendant prays that the complaint herein be dismissed.

Dated: Mineola, N. Y. January 17, 1975.

GOLDMAN, HOROWITZ & CHERNO
Attorneys for Defendant Lois Adlman

By_____, Partner
390 E. Old Country Road
P.O.Box 630
Mineola, New York 11501
(516) 742-5505

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
IN BANKRUPTCY

In the Matter of EDWARD C. ADLMAN, Bankrupt.	74B 385
In the Matter of LOIS ADLMAN, Bankrupt.	74B 386

900 Ellison Avenue
Westbury, New York
April 30, 1975
11:00 O'clock A.M.

BEFORE:

HON. BORIS RADOYEVICH
Bankruptcy Judge

ADJ TRIAL HEARING RE COMPLAINT SPECS OBJS TO DISCHARGE BANK OF PENNSYLVANIA

A P P E A R A N C E S:

CROWE, MC COY, AGOGLIA & ZWEIBEL, ESQS.
Attorneys for Creditor Bank of Pennsylvania
80 East Old Country Road
Mineola, New York 11501
BY: MORRIS ZWEIBEL, ESQ.

GOLDMAN, HOROWITZ & CHERNO, ESQS.
Attorneys for Bankrupts
390 East Old Country Road
Mineola, New York 11501
BY: DOROTHY EISENBERG, ESQ., of Counsel

EDWARD C. ADLMAN, Bankrupt
LOIS ADLMAN, Bankrupt

JOHN E. TURNER, Officer of Creditor Bank of Pennsylvania

oOo

[THE TRIAL WAS CONVENED AT 11:00 A.M.]

THE COURT: In the matter of Edward C. Adlman and Lois Adlman?

MRS. EISENBERG: Your Honor, I request that the matter of Lois Adlman be tried first.

THE COURT: Mr. Zweibel?

MR. ZWEIBEL: If I may, please. I understand that Your Honor has given us leave to amend the Complaint in the Edward C. Adlman action, and the motion that we are making is addressed

to the fourth Cause of Action or the fourth count so as to have the second paragraph read --

THE COURT: [INTERPOSING] Did you write it out?

MR. ZWEIBEL: Yes, I have it written out.

THE COURT: Then why don't you file it with me?

MR. ZWEIBEL: I will be happy to.

MRS. EISENBERG: Do you have a copy for me?

MR. ZWEIBEL: Can we go out and photocopy it?

MRS. EISENBERG: I think it is all right. I can object to it.

THE COURT: All right.

MRS. EISENBERG: I would like to move to dismiss, Your Honor, on the grounds that it does not set forth the Cause of Action within Section 14 of the Bankruptcy Act.

THE COURT: Why don't we wait until we get to try Edward Adlman? I understand you want to do Lois first. Why not do that, and then we will go on with it?

I am going to permit you to amend in accordance with your statement here. I would have preferred if you had rewritten this fourth count so that we had a coherent pleading.

MR. ZWEIBEL: Your Honor, I would like to apologize. I just came from Florida, and the man who was handling this is no longer with us. So, I came in at the last moment, and I apologize and I ask your indulgence.

THE COURT: I know your associate who is here is the one who made this amendment the last time we were in Court, and he could have just as well written out count four instead of doing this orally on the record. I will have a difficult time assimilating it.

MR. ZWEIBEL: Might I ask for leave to redictate it and then submit it to the Court?

THE COURT: Fine, so when I have a record here, I have a coherent record.

MR. ZWEIBEL: I will have the redictated pleading submitted to Your Honor.

THE COURT: Very well. Thank you very much. Shall we go ahead with Lois Adlman, please?

MR. ZWEIBEL: May I note for the record that on the first count, Lois Adlman admits Paragraphs First and Second, so that we have, by virtue of these admissions a concession, so to speak, that Lois Adlman was indebted and is indebted to the creditor --

THE COURT: [INTERPOSING] I guess there isn't any trouble about that. If the Answer admits, it is deemed admitted. If it is not denied, it is deemed admitted.

MR. ZWEIBEL: Edward Adlman, may I call him to the stand, please?

THE COURT: Sure.

[WHEREUPON EDWARD C. ADLMAN WAS CALLED TO TESTIFY.]

E D W A R D C. A D L M A N, having been duly sworn by the Bankruptcy Judge, was examined and testified as follows:

THE COURT: Be seated. Would you give your name and address to the reporter, please?

THE WITNESS: Edward C. Adlman; March Lane, Sands Point, New York.

DIRECT EXAMINATION BY MR. ZWEIBEL:

Q Mr. Adlman, you are the husband of Lois Adlman?

A Yes.

Q And you were her husband in 1972 and in 1973, is that right?

A Yes.

Q Now, there came a time where in October of 1972, a loan was obtained from the creditor, the Bank of Pennsylvania of Reading -- and I will keep referring to them

ADLMAN

as the creditor in this proceeding -- on behalf of the Leesport Gardens Company?

A Yes.

Q You were the one who went to the bank and made the application, is that right?

A Yes.

Q What position did you hold with the Leesport Gardens Company?

A General partner.

Q Now, at that time, you submitted to the bank a personal financial statement, is that correct?

A Correct.

Q Now, I show you a copy of the statement which is annexed to the pleadings, and also marked as Exhibit I for Identification at the Hearing held on October 31, 1974, and ask you whether this is a correct statement that you submitted to the bank?

THE COURT: Counselor, you are going to have to exercise or have your associate bring it up.

A Yes.

MR. ZWEIBEL: May I have it marked in this proceeding, Your Honor?

THE COURT: All right. Have it marked as

ADLMAN

Plaintiff's Exhibit I as of this date.

[WHEREUPON PERSONAL FINANCIAL STATEMENT REFERRED TO WAS MARKED PLAINTIFF'S EXHIBIT I IN EVIDENCE.]

Q At the time that you made that application, you and Lois Adlman signed a continuing guarantee, is that correct?

A Yes.

Q Who was present when you called at the bank?

A Mr. Ed Turner.

Q Is that the gentleman sitting in this courtroom?

A Yes.

Q I believe his correct name is John E. Turner, is that correct?

A Known to me only as Ed Turner.

Q And when had you met him for the first time?

A I think that was the first time. Maybe once or twice before, I don't recall.

Q And other than Ed Turner and yourself, was there anyone else present?

A No.

Q Then the time came when that loan was paid, is that correct?

A Correct, the loan was paid.

ADLMAN

Q Subsequent thereto, another loan was made from the bank on behalf of Leesport Gardens Company, is that correct?

A Correct.

Q You remember when that was done?

A No, I don't.

Q If I referred to the date of June 14, 1973, would that refresh your recollection?

A It would not really refresh my recollection, but I am sure you have the signed note and paper, and if you showed it to me and that's the date, I will agree to it.

Q Okay.

A The answer to the question is yes, sir.

THE COURT: What is the date, sir?

MR. ZWEIBEL: June 14, 1973.

THE COURT: You want it marked as Plaintiff's Exhibit II?

MR. ZWEIBEL: Please.

[WHEREUPON NOTE IN THE AMOUNT OF TWENTY-FIVE THOUSAND DOLLARS, DATED JUNE 14, 1973, WAS MARKED PLAINTIFF'S EXHIBIT II IN EVIDENCE.]

MRS. EISENBERG: I would like to direct everyone's attention to the fact that that is on the second count against Lois Adlman, although I

ADLMAN

don't like to interrupt; is that correct?

MR. ZWEIBEL: Yes. That's where she admits that she is liable to the creditor under this obligation and with a continuing guarantee.

MRS. EISENBERG: We admit it.

BY MR. ZWEIBEL: [CONTINUING]

Q Now, when you went to the bank at that time, were you there alone or who was with you?

A I was there alone.

Q Now, I show you a personal financial statement dated March 15, 1973, and ask whether at that time you submitted this statement on behalf of yourself and Lois Adlman to the bank in connection with the loan made in June?

A Counselor, the way you phrase your question, I didn't submit this statement on behalf of Lois Adlman and Edward Adlman. The statement speaks for itself as a Statement of the Financial Worth of Lois Adlman and Edward Adlman, and I submitted it in my behalf.

MR. ZWEIBEL: May I have this marked as Plaintiff's Exhibit III?

MRS. EISENBERG: No objection.

[WHEREUPON FINANCIAL STATEMENT REFERRED TO WAS MARKED PLAINTIFF'S EXHIBIT III IN EVIDENCE.]

Q At the time that you submitted this Plaintiff's

ADLMAN

Exhibit III in Evidence, I assume that was to Mr. Ed Turner at the bank?

A Correct.

Q Was that at the bank's offices?

A Correct.

Q Where was that located?

A Fifth Street, Reading, Pennsylvania.

Q And was there any conversation had with Mr. Ed Turner with respect to this statement?

A Yes.

Q Would you tell us, please, what you said to him?

A Would you permit me to look at the Statement?

Q Surely.

MRS. EISENBERG: I object, Your Honor. This is more appropriate in Mr. Adlman's case. I feel it has no relevancy to the objection made against Lois Adlman that she gave a fraudulent statement.

THE COURT: I will take it. Objection overruled.

A I told Mr. Turner that I could not, in fact, represent that this was a true statement of my financial net worth.

Q Did you say anything further to him?

A I pointed out several situations in this statement

ADLMAN

whereby the values as computed by my accountant would not be, in fact, correct.

Q Would you detail for us, please, those particular items to which your last answer applied?

A I pointed out to Mr. Turner, as per the notations on this statement written by him, that the Leesport property, while it shows a market value of my one-half interest for two hundred ninety-three thousand dollars, that that would not be correct because of various partnership interests in the property and obligations against the property. Therefore, he reduced the value by two hundred fifty-three thousand dollars and marked it for a forty thousand dollar value.

Q May I see that exhibit, please?

A Yes.

Q And you say that that handwriting is his?

A He wrote it in front of me. We have a clearer copy, Counselor.

THE COURT: Don't interject.

MR. ZWEIBEL: Excuse me, with the Court's indulgence for just a moment.

THE COURT: Sure.

Counselor, would you establish when this conference took place?

Q You have told us where it took place. Would you

ADLMAN

please tell us the date it took place?

A The date I signed the note, to the best of my recollection.

Q That would be June 14, 1973?

A I would assume so.

Q Now, the property --

A [INTERPOSING] Counselor, I would like to answer the rest of the first question.

Q I thought you had.

A No, I had not. You took the statement away from me and you asked me to explain it, and I only explained one item.

Q Will you continue with your explanation?

A Thank you, sir. I would rather look at the clearer copy. Do you want to see if they are the same, Counselor?

Q You take a look.

A I say they are the same. Do you agree they are the same?

Q Well, there is missing "Received by hand of Ed C. Adlman, 6/11/73" -- wait a minute, that does appear. Yes, they are the same.

A I wish to continue with the answer to the Counselor's last question with my further comment in regard

ADLMAN

to this statement not being correct.

Country Club Apartments, Reading, Pennsylvania, marked under construction, equity value two hundred twenty-five thousand dollars. I explained to Mr. Turner that due to mortgage financing, process in work, that it was almost impossible at this time to place a value on this property; and Mr. Turner marked it zero, considered it with no value on this financial statement.

MR. ZWEIBEL: I ask that the words, the phrase from the work "considered" be stricken.

Q I am just asking what happened.

A I am pointing out in Mr. Turner's handwriting, it says zero, the same as the above item says forty thousand.

THE COURT: He marked the item zero. You discussed it with him?

THE WITNESS: Yes, sir.

THE COURT: And he agreed it was zero?

THE WITNESS: I suggested it was zero, and he agreed and marked it so.

Q Now, this agreement was arrived at the same date the loan was effective; that is June 14, 1973?

A Apparently, we are erroneous in saying this was submitted on June 14th. It is written that it was submitted on the 11th and the loan, in fact, was made on June 14th.

ADLMAN

THE COURT: When was your conversation with Mr. Turner, sir? Was it on the 11th?

THE WITNESS: It was on the 11th because this is the day I came in to see him, and he wrote on here, "Received by hand, Edward C. Adlman, 6/11/73."

Q Go ahead.

A There is a further notation on this statement in Mr. Turner's handwriting that says "Minus four hundred seventy-five thousand dollars," and further down on the statement he changed the net worth to four hundred ninety-five thousand dollars instead of nine hundred seventy thousand six hundred dollars, thereby cutting the statement approximately in half insofar as net worth was concerned.

That answers your question, Counselor.

Q Now, I invite your attention to the figures next to the two hundred ninety-three thousand dollar item under the real estate of the 7.7 acres at Leesport.

THE COURT: Seventy point seven, sir.

MR. ZWEIBEL: I'm sorry, 70.7. There is the numeral 40, is that correct?

A That's correct.

Q It doesn't say forty thousand dollars, does it; yes or no?

ADLMAN

A It says 40.

Q And then the figure at the bottom of that column says a minus sign, 475, is that correct?

A That is correct.

Q Now, when were these figures placed on this financial statement?

A On June 11th, at my meeting with Mr. Turner, in front of me, actually at my request.

Q Do you recall that specifically without any doubt, that that occurred at that time and in the manner that you have just explained?

A Yes.

Q In effect, who were the owners of the property listed as 151.6 acres at Spring Township, Reading, Pennsylvania on June 11th, the day that you went to see Mr. Turner?

A Edward Adlman.

Q Were there any other persons who were also owners of the property at that time?

A No.

Q From whom did you acquire this property?

A I don't know the names. It was four partners.

Q Do you remember the date that you acquired the property?

A No.

ADLMAN

Q If I suggest to you that there is a deed on record in Volume 1626 at Page 1172, where there were grantors, Darwin C. Heisey, Jr. and Della A. Heisey, Hamburg, Pennsylvania, would that refresh your recollection?

A My recollection of what?

Q Of who sold the property?

A Well, I believe it was those people -- I am not positive -- plus two other people. I think there was two or three partners that sold me the property, and I believe that those were the names.

Q But you believe, to the best of your present recollection, that the two that I have named were among those who sold you the property?

A I think so.

Q Now, do you know the date that that sale was consummated?

A I do not.

Q Do you know whether it was prior to March 15, 1973?

A I would assume it was.

Q I also suggest to you that the deed to which I have referred --

MR. ZWEIBEL: And may I, with the Court's permission -- I don't have a certified copy of

ADLMAN

the deed here with me now. May I be granted leave to submit it to the Court with the great expectation that I can get it?

THE COURT: All right. Submit a copy to your adversary.

MR. ZWEIBEL: Yes, I will simultaneously to supplying the Court with a certified copy, I will furnish it to my adversary.

Q May I suggest to you there is a deed on file dated March 22, 1973, in which the persons that sold the property were Burton Rice and Helen K. Rice to Dale High and Betty A. High and Edward C. Adlman; does that refresh your recollection?

A When was that deed dated?

Q I have a date here March 22, 1973. These are notes which were given to me pursuant to a telephone conversation, and I do not know whether it was the date of the recording or the date of the deed.

I am asking you whether that date means anything to you?

A It means nothing to me, that date, sir.

Q Do the persons to whom I refer as the grantees on that deed, does that refresh your recollection as to whether or not they were part owners in the property?

ADLMAN

A It does not refresh my recollection.

Q In other words, you tell us now that the property to which we are referring, the 151.68 acres, was purchased and acquired by you and you alone?

A Yes, it was purchased and acquired by me and me alone.

Q And do you remember the date of that acquisition?

A I do not remember the date of the acquisition.

Q Was it in 1973?

A Yes.

Q Was it prior to March 15, 1973?

A Counselor, you have pointed out a date of March 23rd to me --

Q [INTERPOSING] March 22nd.

A March 22nd as that being the date that the property was deeded to me or recorded, one or the other.

Q Yes.

A It could have been prior to March 15th, it could have been on March 22nd; and my statement, while it is dated March 15th, might well have been a statement of March 25th, ten days one way or the other. I don't know, but at the time that I was discussing the loan --

MR. ZWEIBEL: [INTERPOSING] May I ask that the speculation as to what might have been and

ADLMAN

could have been be stricken as not being relevant testimony?

THE COURT: All right. Application granted.

Q In any event, do you recall how much you paid for the property at that time?

A It was either eighty or ninety thousand dollars.

Q And that was paid by yourself?

A Yes.

Q And that was for the entire parcel of property?

A Yes.

Q And that's the parcel that you have listed on this exhibit as three hundred thirty-two thousand two hundred dollars?

A I have listed on this statement as appraised value, three hundred thirty-two thousand two hundred dollars.

Q And next to it, there is just a check, is that correct?

A That's correct.

Q Which indicates that you made no correction in this figure when you spoke to Mr. Turner, is that correct?

A That's correct because I substantiated --

Q [INTERPOSING] Please, just answer my question.

A That is correct.

Q I invite your attention now to the 70.7 acres,

ADLMAN

Leesport, Pennsylvania, which is listed at two hundred ninety-three thousand dollars and to the right of which are the numerals four space zero. Do you know whether that consisted of one tract or more than one tract?

A It was a fifty acre and a 20.7 acre tract, two tracts.

Q Now, the fifty acre, approximately, tract was owned by whom on March 15, 1973?

A I might have a note in my briefcase that would help me answer the question.

Q Perhaps, you have the deed --

THE COURT: [INTERPOSING] Just a moment. Offhand, you don't know, do you? You have no clear recollection offhand?

THE WITNESS: No clear recollection offhand unless I look at something, my own notation, if I have one.

The answer to that question is the property was then owned by Leesport Gardens Company.

Q And on June 11, 1973, who owned that property?

A By June 11, 1973, Leesport Gardens Company owned part of the property, and part of the property was transferred to a company called Narco on a sale and buy-back contract.

ADLMAN

Q What was the date of that sale and buy-back contract?

A May 18, 1973.

Q That was a contract contemplating the sale, is that correct?

A That was the date the sale was made.

Q Was a deed executed in connection with that sale?

A I believe so.

Q Do you have a copy of it or the actual deed, itself, with you?

A I do not.

Q Isn't it a fact that 50.69 acres were conveyed by yourself and Lois Adlman by bargain and sale deed to the Leesport Gardens, a limited partnership, on October 4, 1972?

A It was conveyed by me.

Q I am asking the question whether it is not a fact that the property, 50.69 acres, constituting a portion of the 70.7 acres of Leesport, Pennsylvania, was conveyed by you and Lois Adlman to the Leesport Gardens, a limited partnership?

A I am answering that, Counselor, by telling you, to the best of my knowledge, I conveyed the property because Lois Adlman, to the best of my knowledge, had no interest in the property.

ADLMAN

MR. ZWEIBEL: With Your Honor's permission, may I submit to the Court and offer in evidence a deed which will be furnished to you certified and a copy to my adversary, setting forth the information contained in my question and listing the consideration?

Q How much did you get for that property, Mr. Adlman?

THE COURT: I'm sorry. I don't think that's a proper way to conduct a trial. You presume to put in evidence at a later date something which no one has seen here today and which the defendant doesn't have a chance to object to today. I don't think it is right and I will not permit it.

MR. ZWEIBEL: May I ask this, if Your Honor please, if they wish to continue, upon receipt of -- after all, this proceeding is before Your Honor. There will be no prejudice. If upon receipt they wish to put in further evidence relating to it, I would have no objection.

THE COURT: Let's see what happens when you finish up. If you still want to produce it,

ADLMAN

we will take it up at the close of the session today.

MRS. EISENBERG: I reserve the right to object, Your Honor.

MR. ZWEIBEL: I could have it in the Court's hand, I believe, by tomorrow morning.

THE COURT: You could probably have it tomorrow or next Monday. I don't care. I am not going to undertake to take something in evidence that we don't have. If you have evidence, produce it. If you don't have it, ask for a continuance later on and you will produce it then, and I will take up the matter of giving you a continuance for that purpose; but don't say you are going to produce it and give it in evidence at a later date. I won't permit you to do that, and you can have an exception.

All right, sir. Go ahead.

BY MR. ZWEIBEL: [CONTINUING]

Q What was the consideration for that property?

THE COURT: By whom?

MR. ZWEIBEL: By the parties to whom he sold. He said he sold it to Leesport Gardens.

A Seventy-five thousand dollars.

ADLMAN

Q Now, there was another parcel of approximately twenty acres which went into making up the total of 70.7 acres, is that correct?

A 70.7.

Q That's right. Did you ever own -- and when I say you, I mean you, personally -- ever own any portion of that second parcel?

A Yes.

Q When did you acquire title?

A Title was by agreement with the owner, and I don't think it was ever recorded.

Q Do you have the agreement with you?

A I don't know. I am looking to see if I do.

In August of '72, there was an agreement by Charlotte and Jean Price that I would have an interest in that property if, as and when it was sold to Leesport Gardens Company.

Q Do you have a copy of such an agreement?

A There is one in existence.

Q I asked whether you have a copy of such an agreement?

A I have a copy of the agreement -- yes.

MR. ZWEIBEL: May I ask for a moment to read this, please?

ADLMAN

THE COURT: Yes, of course.

Q You have shown me an agreement dated August 9, 1972 between Jean B. Price and Charlotte E. Price, his wife, and yourself, to which is annexed a copy of a document purporting to be a deed. Was that deed ever recorded?

A To my knowledge, it was not.

Q So that on October 4, 1972, the title owners of this property were Jean B. Price and Charlotte E. Price?

A I assume so.

Q And to whom was the property sold?

A Leesport Gardens Company.

Q And would you agree that that was by deed dated October 4, 1972?

A Yes.

Q You were, at that time, a general partner of Leesport Gardens?

A Yes.

Q And you were a general partner of Leesport Gardens on August 9, 1972?

A I believe so. I am not sure of the date.

Q Would you tell me what consideration you gave for this agreement dated August, 1972 and the unrecorded deed dated the same time?

ADLMAN

A The consideration was that when title was put into and purchased by Leesport Gardens Company, Jean Price would own approximately one-sixth of the entire Leesport Gardens Company as a general partner.

Q But this agreement provides for payment to you, personally, Edward C. Adlman, not to Leesport Gardens; isn't that so?

A Yes, by Jean Price.

Q And Charlotte E. Price?

A That is correct.

Q And not to the Leesport Gardens?

A That is correct.

Q I am asking you now what consideration did you, Edward C. Adlman, pay for this agreement?

A I answered that by saying to you that I agreed to give him one-sixth of my interest in Leesport Gardens Company. I owned fifty per cent of Leesport Gardens Company. I ended up owning thirty-three and a third per cent of Leesport Gardens Company, and assigned my interest of the other one-sixth -- or I should say a third of my interest in Leesport Gardens Company to Jean Price.

Q Is that set forth in this agreement, sir, that you showed me?

A It is not, but I believe it is set forth in the

ADLMAN

other consideration. The agreement speaks for itself. I think it says one dollar and other valuable consideration.

The other valuable consideration was an assignment of one-third of my interest in Leesport Gardens Company which was assigned to Jean B. Price.

Q I ask you to look at the agreement dated August 9, 1972, the agreement, sir. Can you point out to the Court if you will, please, where there is any reference made at all to any consideration?

A Well, Counselor, I must state to you these two papers are combined as one document --

Q [INTERPOSING] Don't categorize the papers. I am directing my question to the agreement and ask you to point out to the Court where there is anything in this agreement that provides or refers to any consideration?

A The agreement does not refer to any consideration.

Q Does the agreement provide for any deed to be issued to you, recorded or unrecorded?

A No.

THE COURT: Wouldn't it be simpler, Counselor, to put the agreement in evidence?

MR. ZWEIBEL: I will put the agreement in evidence.

THE COURT: Then we won't have any speculation as to what it provides or what it doesn't

ADLMAN

provide.

MR. ZWEIBEL: Thank you very much for the suggestion.

MRS. EISENBERG: May I take a look at it, and may I see the other documents, as well?

MR. ZWEIBEL: Surely.

MRS. EISENBERG: I object because he has not satisfied the Court or myself as to what this agreement consisted of, how many pages it is.

THE COURT: We will very quickly do that.

MR. ZWEIBEL: For the record, two pages.

THE COURT: Let me see it, please.

MRS. EISENBERG: That was dated the very same date and wasn't executed. I would allow it in evidence in total, not partially.

THE COURT: I will let you offer the deed when it is your time to do it. Let the deed dated the 9th of August, 1972 between Jean B. and Charlotte E. Price, his wife, and Edward C. Adlman, be marked in evidence, consisting of two pages, to be marked in evidence as Plaintiff's Exhibit IV.

[WHEREUPON DEED REFERRED TO DATED AUGUST 9,

ADLMAN

1972 WAS MARKED PLAINTIFF'S EXHIBIT IV IN EVIDENCE, CONSISTING OF TWO PAGES.]

Q Did you ever receive the fifty thousand dollars referred to in this agreement marked Plaintiff's Exhibit IV?

A Not in total.

Q How much of it did you receive?

A I believe thirty-five thousand or approximately that.

Q To your knowledge, did a time come when Jean B. Price and Charlotte E. Price of Reading, Pennsylvania, conveyed these approximately twenty acres to Leesport Gardens, in limited partnership?

A Yes.

Q And I referred to a deed either dated or recorded on October 4, 1972. At that time, was a sum of money paid to Jean B. Price and Charlotte E. Price, his wife, for that conveyance?

A At that time, I don't believe they actually received any money. I don't believe they received a sum of money.

Q Do you have any records with regard to that transaction?

A No, that was their transaction.

Q You were a general partner of Leesport Gardens?

ADLMAN

A That is correct.

Q And you were present at that transaction between the Prices and Leesport Gardens?

A Right; and to the best of my recollection, at that time, they did not get their money.

Q Do you know when they got their money?

A They got their money in part when the property was mortgaged to Western Pennsylvania National Bank, and simultaneously sold to Narco.

Q Now, just a moment.

A Sometime in May of 1973.

Q And when did you get your money?

A I believe, at that time, they got their fifty thousand dollars and mine was paid off over a period of the following four, five or six months in small payments.

Q Who made the payments to you?

A Leesport Gardens Company.

Q Do you have any record of those payments made to you?

A I don't have those records. Those records were all turned over to the Trustee, and then later to your law firm.

All payments made either to Jean B. Price or to Edward C. Adlman were made from Leesport Gardens Company, and

ADLMAN

you have those records showing those payments.

MR. ZWEIBEL: I don't have them before me. I am told we have a part of the file in the office, but I don't know whether we have that.

Q You say we have the originals in the office?

A You have a record, and it was given to you quite some time ago, of every check given by Leesport Gardens Company, and every check issued by Leesport Gardens Company was issued to Jean B. Price or Edward C. Adlman in behalf of this hundred thousand dollars.

Q Now, getting back to March 15, 1973. You say that your one-half interest was predicated upon the agreement which is marked as Creditor's Exhibit IV, is that correct?

A What's Creditor's Exhibit IV?

Q The contract providing for your getting the fifty thousand dollars.

A Would you repeat the question, please?

[WHEREUPON THE PENDING QUESTION WAS READ BACK BY THE REPORTER.]

A I never said any such thing.

Q Then may I ask you the question directly? On what did you predicate your statement or that portion of your Personal Financial Statement which recited that you had a

ADLMAN

one-half interest in 70.7 acres, Leesport, Pennsylvania, PRD Zone, market value at two hundred ninety-three thousand dollars?

A On or about March 15th I owned a half interest in Leesport Gardens Company. At that time, while the intention was to give the aforementioned interest to Jean B. Price, which would have left me owning thirty-three and a third per cent, my wife owned fifteen per cent as a limited partner, which would add up to forty-eight and two-thirds per cent instead of fifty per cent; but at this point in time I probably, just technically, owned more than half interest, but nevertheless you keep referring to the two hundred ninety-three thousand dollars. I did not represent that that was the value of it at the time.

Q You put down the market value of that property -- and I am now talking about the typewritten portion -- of two hundred ninety-three thousand dollars, is that correct?

A In the typewritten portion, that is correct.

Q And next to it the letters or the numerals four zero. You say that you then told Mr. Turner that that 40 meant forty thousand dollars and represented your personal, or the interest of yourself and Lois in that property; is that correct?

A My estimated value of my interest in that

ADLMAN

property at that time was forty thousand dollars.

Q And when you say yourself, you mean yourself and Lois?

A Counselor, you are going back over two years ago, and at that point I don't know if it meant mine or mine and Lois'. The statement says it is a financial statement of Lois and Edward combined. At that point, she might have owned -- because she really had this small limited partner interest as a dummy. I don't think at the time--

MR. ZWEIBEL: [INTERPOSING] I object to his classification, if Your Honor please.

THE WITNESS: I put a fifteen per cent interest in my wife's name. At this particular time, I either owned fifty per cent plus her fifteen per cent, or I owned, in fact, thirty-three and a third per cent plus her fifteen per cent. Whatever the case might have been, I did put a value on it of approximately forty thousand dollars.

BY MR. ZWEIBEL: [CONTINUING]

Q However, you had an agreement with the Prices which gave you a fifty thousand dollar interest in the twenty acres, the area of approximately twenty acres, is that right?

ADLMAN

A Not, at what point in time are you referring to?

Q I am talking about March 15, 1973.

A I am very confused, Counselor, as to what you are asking me or what you are driving at. I really don't know how to answer what you are asking me.

Q Instead of wondering what I am driving at, if you will just answer the questions, I think we can make progress.

MRS. EISENBERG: May I give this back to him in case it relates to that?

MR. ZWEIBEL: Certainly, perfectly all right.

A Now, what was the question, please?

[WHEREUPON THE PENDING QUESTION WAS READ BACK BY THE REPORTER.]

A By the time of March 15, 1973, I believe that the one-sixth interest in Leesport Gardens Company had already been transferred to Mr. Price, and this transaction and all others were completed.

MR. ZWEIBEL: If Your Honor please, I object to any testimony subsequent to the word believe. I am asking for facts and not for belief or opinion.

THE COURT: He is giving you his best recollection, sir. Would you rather have him say, "I don't

ADLMAN

remember"?

MR. ZWEIBEL: Well, I will withdraw my objection.

BY MR. ZWEIBEL: [CONTINUING]

Q So, at that time, you had received, personally, fifty thousand dollars or you had a value placed on the approximate twenty acres of fifty thousand dollars, is that correct?

A Now, at what time are you referring to?

Q I am again repeating the time of March 15, 1973.

A March 15, 1973, I was giving no value to any twenty acres. At March 15, 1973, this was 70.7 acres owned by Leesport Gardens Company.

Q In which you said on this statement that you had a one-half interest?

A That is correct.

Q And how did you arrive at that one-half interest as of that date?

A As of that date, the one-half interest -- and I repeated this once before for the Counselor -- the one-half interest was either/or I had a one-half interest, which is fifty per cent, as a general partner, and my wife had fifteen per cent, which would have given me a total of sixty-five per cent; but at this point in time, if I had, in fact, transferred one-third of my fifty per cent to Jean

ADLMAN

Price -- let me finish, please -- I would have owned thirty-three and a third per cent as a general partner, plus my wife's fifteen per cent, which would have come to forty-eight and one-third per cent instead of fifty per cent. So, I either owned forty-eight and a third per cent, fifty per cent or sixty-five per cent at the date you are asking me.

Q And you say that that ownership was in your name and Lois Adlman's name?

A I did not say that. I said either/or.

Q Isn't it a fact that the title to that property as of that date was in the name of Leesport Gardens?

A Company.

Q Company.

A A limited partnership.

Q A limited partnership?

A Correct.

Q And not in the name of yourself and your wife?

A It was in the name of Leesport Gardens Company.

Q Now, have you gone over these records with your wife, Lois Adlman?

A No.

Q You have never spoken to her about them?

A About the records?

Q Yes.

ADLMAN

A No.

Q Now, I am talking about -- first, I will address myself to after the filing of her Petition in this Court.

A You didn't ask me anything, sir.

Q Did you go over any of the records with her subsequent to the filing of her Petition in Bankruptcy in this Court, which I believe was March, 1974; is that correct?

MRS. EISENBERG: March 22, 1974.

A No.

Q And she is here with you this morning in Court?

A Yes.

Q Did you ever discuss with her the statement dated March 15, 1973, which you submitted to the bank?

A No.

Q Was her signature ever required in any of these transactions?

A Yes.

Q Isn't it a fact --

A [INTERPOSING] In any of what transactions, sir?

Q Any of these transactions relating to the real estate about which we are inquiring.

A I think in the State of Pennsylvania when a husband conveys property, his wife has to sign. So, I think

ADLMAN

at one time, my wife had to sign in order for me to convey. I don't really think she was ever required to sign anything else in relation to Leesport Gardens Company.

Q Was she present in the bank at the time that the continuing guarantee agreement was signed?

A You asked me prior to this if I was there alone, and I said yes. I was still there alone, and my wife was not there.

Q Do you remember when she signed that agreement?

A I brought it home to her, and a few days later she signed it, and I mailed it back to the bank.

Q If I may again address myself to the 50.696 acres. When did you acquire title to that? This, I understand, was one of the two parcels that constituted the 70.7 acres to which reference is made in the real estate subdivision of your statement.

A On or around June 15, 1972.

Q Do you recall what you paid for it at that time? Let the record show that you are looking at records, papers that are in your hand.

A You asked me what I paid for it. Is that the question?

Q I believe that was the question.

A Seventy thousand dollars.

ADLMAN

Q Now, may I address myself to your personal residence at Sands Point? Do you recall when that personal residence was acquired?

A No, I don't recall.

Q Do you recall how much you paid for it at the time that it was purchased?

A I believe the contract price was one hundred twenty thousand dollars.

Q I show you a paper and ask you whether that refreshes your recollection as to when the purchase was made?

A Yes.

Q Having refreshed your recollection, would you please answer the earlier question?

A We took title the 29th day of August, 1972.

Q You have listed on this statement that this residence had a value of one hundred sixty-seven thousand dollars, and that is as of March 15, 1973, is that correct?

A Yes.

Q And that's the property for which you say you paid --

A [INTERPOSING] One hundred twenty thousand.

Q One hundred twenty thousand dollars. In other words, you have it listed here at forty-seven thousand

ADLMAN

dollars more than you paid for it?

THE COURT: That's obvious. Why don't you ask him, if you are interested, where the difference is?

Q You heard the suggestion of the Court. Where is the difference?

A You are talking about the difference between the actual purchase price of one hundred twenty thousand and my figure of one hundred sixty-seven thousand?

Q Yes.

A Which is forty-seven thousand dollars?

Q Yes.

A Patios, landscaping, interior flooring which I put into the house, tile flooring and other amenities that were not included in the house when you buy it from a builder.

THE COURT: These were improvements that you put in the house?

THE WITNESS: Improvements that are made to the house after acquiring it.

Q Do you have bills or checks showing payment for the items to which you refer?

A No, I don't.

Q If I may refer to the testimony you gave at the

ADLMAN

first meeting of creditors, particularly Page 23 -- and I am showing it to your counsel -- am I correct in saying that at that time you testified that you paid about one hundred eleven thousand dollars for the house?

A That is correct, and I did not say that I paid one hundred twenty thousand for the house in this testimony. I said the contract price was one hundred twenty thousand dollars. If I said other than that, that was my intention. The contract price was one hundred twenty thousand. The builder gave me a nine thousand dollar allowance, and the actual purchase price came to one hundred eleven. Then I spent the nine thousand dollars putting in what the builder didn't put in, plus another forty seven some odd thousand on additional improvements.

The builder gave me a nine thousand dollar credit for not installing an oak floor throughout the living room, dining room, foyer and so on.

Q And you do not have any checks, invoices or bills showing the expenditure which we now have, instead of the difference from one hundred twenty to one hundred sixty-seven, one hundred eleven to one hundred sixty-seven thousand dollars?

A Counselor, your client has a closing statement on the house which shows it closed at over one hundred

ADLMAN

twenty-two thousand dollars with some of the builder's extras; and secondly, your client has most of my checks.

Q Just answer my question.

A I am answering your question.

Q You retained an interest in the house, did you not, sir?

A I don't understand the question.

Q This house was subsequently sold?

A Yes.

Q And it was sold, so that we can expedite matters, according to the record, by yourself and your wife -- the property was conveyed to your wife by deed dated September 26, 1972, and recorded October 2, 1972, is that right?

A That's right.

Q And did your wife pay you any money for your share of the house?

A No.

Q When the house was purchased, did you not participate in payment of the consideration for the house?

A The answer to your question, Counselor, is that most of the primary money that was in this house was my wife's and her family's money because this is a house that came from two prior houses, the first of which was bought entirely by my wife and her family.

ADLMAN

Q Could you please answer the questions I ask, and if I want to inquire into the earlier history, I will do so?

A I did.

Q Isn't it a fact that you retained control over the use of the monies which were realized at the sale of the house to your aunt and uncle?

A My aunt and uncle bought the house.

THE COURT: Would you mention the names, please?

MRS. EISENBERG: Excuse me. Can we refer to which transaction you are talking about, the sale at the time the house was purchased from -- by Mr. or Mrs. Adlman to Mrs. Adlman, or what?

MR. ZWEIBEL: Yes, Counselor. You are correct.

Q Did a time come when the house, this residence, was sold to David Adlman and Dorothy Adlman?

A Yes.

Q And that was in September of October of 1973, is that correct?

A Yes.

Q Do you know how much the house was sold for?

A Yes.

Q How much?

A One hundred twenty-five thousand dollars.

ADLMAN

Q Part of that was cash and part subject to a mortgage, is that correct?

A That's correct.

Q Now, you said that the money that went into this -- to the initial purchase of the house, going back to when you and your wife first bought it -- was supplied, to use some of your words, in large measure by your wife and her family?

A Correct.

Q Upon the sale of the house, did you exercise any control over the proceeds of the sale of the house?

A What house are you talking about?

Q The private house which you had bought, subsequently had conveyed your interest to your wife, and thereafter she had sold to David Adlman and Dorothy Adlman; that's the house about which I am speaking.

A Did I have any control over the monies?

Q Yes.

A Generally, after twenty-nine years of marriage, your wife discusses --

THE COURT: [INTERPOSING] Just answer the question.

Q Just answer yes or no.

A Did I have any control over the money?

ADLMAN

Q Yes.

A No.

Q May I invite your attention to the testimony given by your wife in this Court on April 30, 1974 at the first meeting of creditors, Page 12 of the transcript, wherein she said -- she had answered as follows:

"Question: Were you the only one authorized to sign checks?

"Answer: Yes, I did what I was told by my husband.

"Question: So, he exercised domain over these funds?

"Answer: Yes.

"Question: Did you make the decision on the funds you had?

"Answer: Yes.

"Question: You sold the house to his aunt and uncle in October, 1973, is that correct?

"Answer: Yes."

A Would you read the last paragraph of that to me again, if you don't mind? The last thing that she said, my wife?

THE COURT: Here it is. You may look at it.

THE WITNESS: Thank you, sir. The last paragraph

ADLMAN

of this says, "Did you make the decision on the funds you had?" And her answer was "Yes."

Thank you.

BY MR. ZWEIBEL: [CONTINUING]

Q I invited your attention to the questions and answers which I had read.

A That was the last one you mentioned, and that's the one I didn't get.

THE COURT: Counselor, he has read them now. Do you want to ask a question, sir?

Q Do you know what happened to the net proceeds of the sale of the house by your wife to your aunt and uncle?

A Do I know what happened with the net proceeds?

Q Yes.

A Partially.

Q When you used the word partially, just what do you mean?

A I mean I knew where some of the proceeds went.

Q Where did some of the proceeds go?

A Some of the proceeds went to pay insurance premiums and insurance policy loans, and other living expenses.

Q Were those policies to which you refer those on your life or hers, if you know?

ADLMAN

A They were all on my life with one exception, a policy that my wife owned on her father's life.

Q Were those new policies that were taken out?

A No, sir.

Q They all were in existence at the time?

A Yes, sir.

Q Were these premiums that were overdue that were paid?

A No, they were not overdue.

Q I show you checks drawn by your wife to several insurance companies. Six are dated October 4, 1973, and five dated October 12, 1973, and one dated October 19, 1973.

I now show you the several checks to which I had referred. One of the checks, I believe, or several are made out to the Canada Life Insurance Company.

The question was rather simple I thought.

A I didn't look at the checks yet, Counselor.

Q I see. All right.

A Yes, one is made out to Canada Life. In fact, two are.

Q What are the amounts listed on the checks?

A Twelve hundred thirteen dollars and one is twelve thousand four hundred fifty-three dollars fifty cents.

Q Do you know what those checks were issued for?

ADLMAN

A One was for the premium on the policy and one was to pay off the loan on the policy.

Q Which one was the one to pay off the loan?

A The twelve thousand.

Q Now, there is a Guardian Life Insurance Company check. What was that for?

A I believe that's my health insurance.

Q Your personal health insurance?

A I believe so.

Q Now, there are, dated October 12, 1973, five checks drawn to the order of the Mutual Benefit Life. What were those payments made for?

A Three premium payments and two policy loan payoffs.

Q And the policy loan payoffs were in the sum of?

A Approximately, seventeen thousand dollars.

Q And the premiums consisted of -- totaled?

A I don't know. Put them on an adding machine.

Q Approximately thirty-three hundred dollars?

A Approximately thirty-three hundred dollars.

Q And the Guardian Life Insurance, there are four checks all dated October 4th. What were they for?

A Again, two to pay premiums in the amount of approximately twenty-six hundred dollars and two to pay off

ADLMAN

the policy loans in approximately the sum of twenty-three thousand dollars.

MR. ZWEIBEL: I offer these checks in evidence, if I may, Your Honor.

THE COURT: All right. Any objection, Mrs. Eisenberg?

MRS. EISENBERG: No.

[WHEREUPON CHECKS REFERRED TO WERE MARKED PLAINTIFF'S EXHIBIT V IN EVIDENCE, CONSISTING OF TWELVE IN NUMBER.]

THE COURT: I have got five checks to Guardian Life, five checks to Mutual Benefit Life and two checks to Canada Life.

MR. ZWEIBEL: That's right.

THE COURT: Thank you very much, sir. You may go ahead.

BY MR. ZWEIBEL: [CONTINUING]

Q Now, the checks that were drawn to pay off loans on the respective policies were loans made to you, is that correct?

A They were loans made to my wife -- they were her policies. The loans were made to her.

Q These policies were taken out on your life, is that correct?

ADLMAN

A That's correct.

Q Do you have the policies with you?

A I do not.

Q Are they available, sir?

A Yes.

Q And you say that loans that were made on those policies were made by your wife?

A Yes.

Q And that money was used in connection with the Leesport Company, was it not?

A I didn't say that.

Q All right. Was it?

A No.

Q Do you know the purpose for which the loans were made?

A Yes; living expenses, general expenses, various family needs.

Q And you say that those checks were drawn through the companies to your wife?

A Yes.

Q On policies issued on your life?

A She is the owner of the policies with the exception of one of the policies which was owned by me, and on that policy I had formerly made loans for the purpose of

ADLMAN

sustaining myself, my wife and my family. All the other policies, as I mentioned, are in her name. She owns them.

MR. ZWEIBEL: That will be all. That's all I have with this witness.

THE COURT: Do you have any cross-examination?

MRS. EISENBERG: Just a few questions.

I will cross-examine, Your Honor, but I see no relevance to this entire testimony under the complaint against Lois Adlman.

CROSS-EXAMINATION BY MRS. EISENBERG:

Q Did you submit a statement to Mr. Ed Turner on June 11, 1973?

A I did.

Q Did Mr. Turner, at that time, ask you to have your wife submit a statement?

A No, he did not.

Q Did you ever acknowledge to him that this statement was given to you by your wife?

A No, I did not.

Q Did you acknowledge that any statements herein were made by your wife?

A No, I did not.

Q In reference to the Spring Township property where

ADLMAN

it says -- going back to Plaintiff's Exhibit III, I believe it is -- the statement as of March 15, 1973, where it says Spring Township Appraisal Value. Did you submit an appraisal to Mr. Turner?

A I did.

Q When did you submit that appraisal to him?

A At the same time that I gave him the statement.

Q And did that appraisal reflect that the appraised value was two hundred thirty-two thousand two hundred dollars?

A Exactly.

Q And did you leave that appraisal with him?

A I left that appraisal with him.

Q Did he question you further after looking at it with regard to that property?

A No.

Q In regard to the 70.7 acres at Leesport, Pennsylvania, did you thoroughly discuss the valuation of this property with Mr. Turner on June 11, 1973?

A Yes.

Q And did you tell him that the evaluation placed here in typewritten numbers was book value?

A I told him it was book value at the time the statement was made up in March.

Q And did you tell him that that was not an

ADLMAN

accurate evaluation at that time?

A I did.

Q And that you believed it should be changed?

A I told him that the value as of March 15, 1973, when this statement was prepared, was erroneous, and it should be valued at forty thousand dollars.

Q And did he, with his own hand, make the notation alongside the typewritten numbers?

A Yes.

Q And did you discuss with him what your one-half interest reflected at that time?

A Yes.

Q And did you tell him essentially what you have told us here today in this courtroom as to your one-half interest?

A Yes, I did.

Q And was he aware of your agreement with the prices? Did you mention that to him?

A There was, at this point in time, no further agreement with the prices.

Q There was one at that time?

A Of course not. That was in 1972.

Q So that whatever the agreement of 1972 was, it had already been consummated?

ADLMAN

A Correct.

Q And that statement that you had given as of March 15, 1973, reflected what was the fact as of that time?

A That is correct.

Q Since we have already introduced one part of an agreement dated August 9, 1972, would you tell me whether that agreement of the two pages that's marked, is the total agreement that had been agreed to by the parties?

A No, it is not the total agreement.

MR. ZWEIBEL: I object to that, if Your Honor please. I think the documents speak for themselves. There is no reference in the two pages to any other document, and the fact that they were brought into this Court stapled together does not make it a part of that agreement.

THE COURT: I agree. I am not questioning you.

Q Will you tell me whether the agreement that is marked Plaintiff's Exhibit IV was the total agreement agreed to at that time between the parties?

A Might I refer to the agreement, Counselor?

Q Yes.

A Number three of the agreement says, "The parties hereto designate John A. Hoffert, Jr., Esq. as

ADLMAN

distribution agent for the proceeds of the sale in accordance with the aforesaid," and at that time Mr. Hoffert, taking on that responsibility, insisted upon the Prices making a deed to me and attaching it to the agreement.

MR. ZWEIBEL: Your Honor, I object to that. What Mr. Hoffert insisted upon, that isn't reflected in any of the written documents.

THE COURT: All right. Objection sustained.

Tell me this, sir. At the time the agreement was signed with Jean Price and his wife, were there any other documents signed?

THE WITNESS: Yes, a deed from Jean and Charlotte Price to Edward C. Adlman, of equal date.

THE COURT: Was this deed executed in connection with the understanding between the parties?

THE WITNESS: Yes, sir, that was the purpose of it.

THE COURT: Is that the deed that you have in your hand?

THE WITNESS: Yes, sir.

THE COURT: Do you want to offer it?

MRS. EISENBERG: I want to offer it into evidence.

MR. ZWEIBEL: I will object to it on the grounds that it is not reflected in the agreement. He

ADLMAN

is altering the written document by parol evidence, and there is no reference whatever to that. This is an unrecorded instrument.

THE COURT: I know it is.

MR. ZWEIBEL: It never was recorded.

THE COURT: I agree. They are offering it simply as part of the documents executed on that date. For whatever it is worth, I will accept it. Objection overruled.

MRS. EISENBERG: As a matter of fact, Your Honor --

THE COURT: [INTERPOSING] Don't pursue that. Let it be marked as Defendant's Exhibit A in Evidence.

[WHEREUPON DEED FROM CHARLOTTE AND JEAN PRICE TO EDWARD C. ADLMAN DATED AUGUST 9, 1972 WAS MARKED DEFENDANT'S EXHIBIT A IN EVIDENCE.]

BY MRS. EISENBERG: [CONTINUING]

Q Mr. Adlman, when was the time that your wife and yourself decided to purchase the first house that you ever owned?

A About 1959.

Q And at that time, did you find a house referred to?

A We found a model house.

ADLMAN

Q What was the purchase price?

A The base price was twenty-six thousand five hundred dollars.

Q And where did Mrs. Adlman obtain the money to buy this house?

MR. ZWEIBEL: I object to the question, if Your Honor please.

THE COURT: Mrs. Eisenberg, the question is obviously leading.

MRS. EISENBERG: I will rephrase the question.

Q Who purchased that house?

A My wife and I jointly.

Q And with what funds was that house purchased?

A Money that my wife had and money that my father-in-law gave to her for the down payment, plus a veteran's mortgage.

Q Did you take that house in both names?

A Yes.

Q How long did you retain your name on the deed?

MRS. ZWEIBEL: Object to the form of the question.

MRS. EISENBERG: I'm sorry.

Q Were you both on the bond and mortgage for the purchase of that house?

A That is correct.

ADLMAN

Q And subsequently conveyed title from Edward C. Adlman and Lois Adlman to Lois Adlman?

A Yes, we did.

Q And when did you do that?

A Shortly after the purchase.

Q Which property was that?

A That was 246 Kent Drive, Hewlett.

MR. ZWEIBEL: If Your Honor please, I don't see the relevancy of this testimony.

THE COURT: You went all over this. Let her be happy, please.

MR. ZWEIBEL: Fine. I will withdraw my objection.

Q And was that house subsequently sold approximately August 21, 1961?

A Yes, it was.

Q And it was sold by Lois Adlman?

A That's correct, Counselor. I gave you the wrong date of the purchase, not that it means anything. It was purchased way back in '51, I think, and sold in '61.

Q Thereafter, did you and your wife purchase another house?

A Yes.

Q When did you purchase the other house?

A At the same time we sold the first house on Kent

ADLMAN

Drive, we purchased a new house also to be built for us in Lake Success at 18 Lake Road.

Q And did you purchase that house in your name and in your wife's name?

A Yes, I did.

Q And you were on the bond and mortgage thereof?

A Yes, I was

Q When was that approximate date of purchase?

A About 1961. The same time the other house was sold.

Q Did you, shortly thereafter, convey from both names to Lois Adlman?

A Yes, I did.

Q And the proceeds that went to the purchase of this house at 18 Lake Road, where did the money come from?

A From the sale of the old house plus several thousand dollars from her father to make up the difference in the cash, and again subject to a mortgage.

Q The house in question which we are speaking of, which we referred to in Sands Point, New York, was that purchased in August, 1972 in both names?

A Yes.

Q And are you on the bond and mortgage of this?

A Yes.

ADLMAN

Q And did you subsequently convey to Lois, from Edward and Lois to Lois?

A Yes.

Q And was that approximately one month later?

A Approximately.

Q And is the ownership of that house in Lois Adlman?

A It was all during the time that we occupied it as owners, it was in Lois' name.

Q I'm sorry about that. In other words, from September 26th of 1972 until the time that Lois sold it, she owned it?

A In her name.

Q In her name. And the proceeds to purchase this house, where did they come from?

A Primarily out of the sale of the prior house.

Q And this house that we are talking about in Sands Point, New York, after it had been sold, did Lois -- to the best of your knowledge, did Lois deposit the money into her checking account?

A Yes, she did.

Q Did she give you any of the money to deposit into your own checking account?

A No.

ADLMAN

Q To the best of your knowledge, did she give you any money, at that time, to pay business obligations that you had at that time?

A No.

Q Did she pay bills that were due and current, such as household bills?

MR. ZWEIBEL: I object to it because of lack of definiteness.

THE COURT: Objection sustained.

Q After the sale, when the money was deposited into Lois' bank account, do you know what she used the monies for?

A Yes, she used it to pay insurance premiums, insurance policy loans, living expenses, other personal debts and to sustain herself because my income was, at that time, nil.

Q And at that time, were you bringing in much money? At the time that the sale took place, were you bringing much money home to pay weekly bills?

A No, I stopped drawing money out of my business activities in September of 1973.

Q But did Lois give you any funds from the sale of this house to pay, let's say, mortgages for your businesses?

A No.

MRS. EISENBERG: That's all the questions I have now.

ADLMAN

MR. ZWEIBEL: May I, please?

THE COURT: Yes, sir.

REDIRECT EXAMINATION BY MR. ZWEIBEL:

Q The policy loans which were made, were any of those monies paid to you for use in connection with any business activities?

A No.

Q When was the first time a loan was made on the policy?

A I don't remember.

Q Can you give us an approximate year?

A Occasionally, there were loans made to help pay the premiums. Occasionally; there were loans made to help with living expenses, but I don't know when the payments were made.

Q Do you know when the first one was made?

A No, I don't.

Q There is a check here drawn to Guardian Life Insurance Company for eleven thousand twenty-five dollars fifty cents in the payment of a loan. Do you know when that loan was made on Policy Number 1135348?

A That was a series of loans made over a period of years to pay premiums and to draw monies to live on, as

ADLMAN

with the rest of those loans.

Q Now, when was the first time such loan was made?

A I do not know.

Q Could you tell us what your income was -- your income in 1970?

A What my income was in 1970?

Q Yes.

A You are talking about five years ago, 1970?

Q That's correct.

A No, I couldn't tell you at all.

Q Do you have any approximate idea?

A No.

Q Did you make any money that year?

A [NO RESPONSE.]

Q Did you earn any money that year?

A Yes.

Q Either from investments or business activities?

A Yes.

Q And you have no idea what it was?

A No.

Q Did you earn any money at all in 1971?

A Yes.

Q Do you have any idea how much that was?

ADLMAN

A I would like to ask a question. You know, when you talk about earning money, I don't know if you are talking about taxable income or if you are talking about money that's cash flow. I don't know what you mean by earning money, Counselor.

Q All right. Supposing I put it this way, taxable income?

A Taxable income?

Q Yes.

A Very little taxable income.

THE COURT: We are getting into a funny area here. When you talk about a taxable income, it could be from U.S. Government Bonds or municipal securities.

MR. ZWEIBEL: I withdraw the money made.

Q Did you earn any money from your businesses in 1971?

A Yes.

Q Do you have an idea of how much it was, approximately, a rough guess?

A Fifty thousand dollars.

Q A part of that fifty thousand dollars, did that go for the maintenance of the home?

A Yes.

ADLMAN

Q Did that go to pay off the mortgage on the home?

A Yes.

Q Did that go for other household needs?

A Yes.

Q Now, over and above the fifty thousand dollars, you had other income, did you not?

A No.

Q So, your sole income in 1971 was from your business?

A Yes.

Q You had no investments of any kind?

A I might have had investments, but I didn't have any income out of them. So, my sole spendable money, cash flow that I could spend to support my wife and myself was approximately fifty thousand dollars.

Q And in 1972?

A I would say approximately the same.

Q And similarly, that money also went into paying off a mortgage, the interest on the mortgage and the other household expenses?

A Yes.

Q And in prior years, your income was also devcted to paying off mortgages on the respective homes?

A Yes.

ADLMAN

Q So, therefore, when those other homes that you testified to earlier were sold, a considerable portion of that constituted monies that you had used to amortize the mortgages on those homes?

A There was usually very little amortization. It was mostly taxes and living expenses.

Q Was there any amortization on it?

A Yes.

Q Did they also provide for amortization?

A Yes.

Q You said something about giving an appraisal to Mr. Turner?

A Did you ask me a question, sir?

Q Yes. In the course of examination by your attorney, you made reference to an appraisal which I think you said you gave to Mr. Turner.

A Correct.

Q And you said you gave it on June 11, 1973?

A Correct.

Q At his office, is that correct?

A Correct.

Q Do you have a copy of that appraisal?

A Not with me, but I would assume there could be one made available.

ADLMAN

There is a copy in existence.

Q Do you recall who made this appraisal?

A Yes, a man by the name of Fry. I don't know how you spell it, and I don't know his first name because I never met him in my life. His name was Fry.

Q Who introduced you to him?

A He was recommended by a Mr. Tilly, who was a real estate broker.

Q Did you get a receipt from Mr. Turner that you had delivered to him such an appraisal?

A I didn't get a receipt for anything that I gave to Mr. Turner.

Q Now, other than the continuing guarantee, which is annexed to the pleadings, signed by your wife and yourself, and the receipt and the note, did you sign any other documents or did you deliver to Mr. Turner any other documents on or prior to June 11, 1973?

A At one time or another, and I don't remember when I gave it to him, I gave him a list of references.

Q Do you have a copy of that list, please?

A I think my attorney has it.

MRS. EISENBERG: I have it.

THE WITNESS: I don't know at what point in time I gave it to him.

ADLMAN

MR. ZWEIBEL: May we mark this for identification, please?

THE COURT: Sure. Characterize it, please, for the record.

MR. ZWEIBEL: It is on the letterhead of Country Club Apartments, 355 Lackawanna Street, Reading, Pennsylvania, and the caption is "References of Edward C. Adlman." It has a personal note on the top.

MRS. EISENBERG: Which was placed on it recently.

MR. ZWEIBEL: Thereafter.

THE COURT: Plaintiff's Exhibit VI for Identification.

[WHEREUPON LIST REFERRED TO ON LETTERHEAD OF COUNTRY CLUB APARTMENTS WAS MARKED PLAINTIFF'S EXHIBIT VI FOR IDENTIFICATION, CONSISTING OF TWO PAGES.]

MR. ZWEIBEL: I thought I would do this to, perhaps, expedite any inquiry which would be made on his application. Am I correct in assuming the testimony he is giving now would also be used on the application being brought in his behalf?

MRS. EISENBERG: That's why I was objecting. Either

ADLMAN

the objection is made on the grounds of Section 17C-3, based on the fact that she gave a materially false financial statement which had been relied upon by the creditor -- there has been nothing in this entire examination to indicate that.

THE COURT: I know, but why don't you wait until he finishes before you make any motions? This is not the time for it.

MRS. EISENBERG: Then I don't know what the question is.

THE COURT: His inquiry right now is can we use the testimony that he has just now given in the matter of the objections to Edward Adlman?

MRS. EISENBERG: I have no objection, Your Honor.

THE COURT: I don't see why it shouldn't. I don't want to go through this all over again.

MRS. EISENBERG: I have no objection. Of course, I have the right to requestion.

THE COURT: On his case, I will give you the opportunity to recross.

BY MR. ZWEIBEL: [CONTINUING]

Q A loan was also made by the creditor, Bank of Pennsylvania, of ten thousand dollars on behalf of --

ADLMAN

MR. ZWEIBEL: [INTERPOSING] This is in his behalf.

MRS. EISENBERG: I don't think it is appropriate now.

THE COURT: Don't do it now. At least try to finish Lois at this point.

MR. ZWEIBEL: All right.

Q Do you say that your wife, Lois, never saw this statement compiled by Niel Roth Company?

A She never saw it until after such time as we had filed bankruptcy and our lawyer called it to both of our attentions.

Q Did she have an income of her own?

A No -- at what point, sir?

Q 1970?

A No.

Q 1973?

A 1973, she might have earned a thousand or two thousand dollars as a salesperson for a real estate office.

Q 1972, yes or no?

A No.

Q From 1970 through 1974, did she contribute anything to the support of your household?

A 1970, she didn't; 1971, she didn't; 1972, she didn't. In 1973, maybe two thousand dollars. 1974, maybe

ADLMAN

six or eight thousand dollars.

MR. ZWEIBEL: No further questions.

THE COURT: We are going to take a recess until two o'clock.

[WHEREUPON THIS HEARING WAS RECESSED AT 1:00 P.M. AND RECONVENED AT 2:05 P.M.]

THE COURT: Good afternoon. Be seated, please. The matter of Lois Adlman, plaintiff's case.

MR. ZWEIBEL: Mrs. Adlman, please?

[WHEREUPON LOIS ADLMAN WAS CALLED TO TESTIFY.]

L O I S A D L M A N, having been duly sworn by the Bankruptcy Judge, was examined and testified as follows:

THE COURT: Will you give your name and address, please, to the reporter?

THE WITNESS: Lois Adlman; March Lane, Sands Point, New York.

THE COURT: All right, sir.

MR. ZWEIBEL: Thank you.

DIRECT EXAMINATION BY MR. ZWEIBEL:

Q Mrs. Adlman, you are before this Court on your

ADLMAN

application for a discharge in bankruptcy, is that right?

A Yes, sir.

Q You are the wife of Edward C. Adlman?

A Yes, I am.

Q When were you married, may I ask?

A June 29th will be twenty-nine years ago.

Q Now, there came a time in 1972 when an application was made by the Leesport Gardens Company for a loan from the creditor here, the Bank of Pennsylvania, in the sum of twenty-five thousand dollars. Were you familiar with that?

A Well, I believe I signed something to that effect.

Q Prior to the time that you signed something, had you participated in any of the activities of the Leesport Gardens Company?

A Nothing at all.

Q I will call it Leesport.

A No, I haven't. I never did.

Q Did you attend any of their meetings?

A I have never been at a meeting.

Q Did you ever see any of their statements or reports?

A No, not to my knowledge.

ADLMAN

Q Over the years, was the principal source of income for your family your husband's earnings and income?

A My husband's, as well as my father's. I am an only child, and he has always assisted me all along the way.

Q Wonderful father. But your husband did have earnings over the years, did he not?

A Yes, he did.

Q And that money was used to defray the household expenses, pay off the mortgage and the like?

A Yes.

Q On the different homes in which you lived?

A Yes.

Q Now, I show you a statement, a copy of Exhibit III, and ask you whether you ever saw this statement at any time prior to that?

A I believe the statement was shown at the time that we went to Mr. Goldman's office with my husband. I hadn't seen it prior to that -- on the bankruptcy proceedings.

Q By Mr. Goldman, do you mean at a first meeting of creditors?

A No.

Q Mr. Goldman is your attorney?

A Yes.

ADLMAN

Q And he inquired concerning this, is that correct?

A Yes, he had mentioned this. I had never seen that prior to that, though.

Q Do you know that you were a limited partner in the Leesport Company?

A No, not really.

Q Had you paid any money into the Leesport Company to become a limited partner?

A No.

Q Did you have any separate account from your husband?

A In the twenty-nine years that we are married, I always had my own checking account. We never, ever had a joint checking account at any time.

Q And he had his own checking account?

A Yes.

Q Did you, at any time, from your checking account, make a payment to the Leesport Gardens Company for your interest in that company, as a limited partner?

A No, I did not.

Q Did you participate or have any activity in your husband's business ventures of any kind?

A No.

Q Pardon me?

ADLMAN

A No, I did not.

Q Now, you say you signed a paper for the bank, is that right?

A My husband gave me some paper from a bank, and I do recall signing it.

Q And where was that?

A At home.

Q Did he tell you what it was for?

A He mentioned it was something that he needed in business, and that it was important that we have both signatures because evidently, from what he explained to me, that both signatures would be required in the State of Pennsylvania.

Q Did you know that that constituted a guarantee of the obligations of the Leesport Company?

A I didn't really go into it to that effect. I just know that his request was to sign it.

Q And you asked no questions concerning it, is that it?

A No. As I said before, he had mentioned that both signatures would be required. It seems to be law of Pennsylvania. That's all I asked, to my knowledge.

Q Now, reference has been made to insurance policies. Do you have them in your possession?

ADLMAN

A They are in the vault.

Q And do you know who is the owner of those policies?

A Myself.

Q And they are on your husband's life?

A Yes, they are.

Q Now, when your house was sold to your husband's aunt and uncle, David and Dorothy Adlman, on October 12, 1973, were you present at the time the closing was held?

A Yes, I was.

Q And a certain sum of money was paid to you?

A Yes.

Q In your name?

A Correct.

Q And what did you do with that money?

A I put that money in my checking account, which I have had for many years at the Bank of North America, and I paid insurance policies.

I was very much concerned about my husband's health. Unfortunately, over the past years, it was about four and a half years ago, he was in the intensive care unit at North Shore Hospital with a heart attack, and then about a year and a half later, there was a severe car accident.

Q Please don't.

ADLMAN

A I thought you are asking me why. That's why I proceeded to tell you. I'm sorry.

Q He had these conditions, unfortunately, but I would like to stay within the confines of the present issue. I regret he had these conditions.

Who made the loans on the Guardian Insurance Application?

A To my knowledge, I really don't remember exactly.

Q Because you paid them a considerable sum of money on October 4, 1973.

A Right.

Q Do you know how long those loans had been in existence?

A Well, the loans or the actual policies?

Q The loans.

A No, I couldn't tell you exactly.

Q Do you have any records relating to that?

A No.

Q You knew at the time you signed that paper that your husband brought to you that you were guaranteeing all of your personal assets on the obligations of Leesport to the bank?

A I knew I was signing for a loan. To be honest, I didn't digest it to that extent.

ADLMAN

MRS. EISENBERG: May we get the date of the guarantee that you are referring to?

MR. ZWEIBEL: Surely. It is annexed to the Complaint, and you have admitted it in your Answer.

THE COURT: Has it been introduced yet?

MR. ZWEIBEL: I thought we had because it is part of the Complaint. If not, I will introduce it now.

Q I show you a copy, a document consisting of two sides dated October 13, 1972, and ask you whether that is your signature?

A Yes, that's my signature.

Q And is that your husband's?

A Yes, it is.

MR. ZWEIBEL: Then I offer it in evidence, Your Honor. That is the continuing guarantee which the defendants had admitted.

THE COURT: Any objection, Mrs. Eisenberg?

MRS. EISENBERG: No, sir.

THE COURT: Plaintiff's Exhibit VII.

MR. ZWEIBEL: Did that obligation exist at the time --

MRS. EISENBERG: [INTERPOSING] That application, the

ADLMAN

loan upon wnich this guarantee was given, has been repaid and was repaid prior to 1973.

MR. ZWEIBEL: I know, but this was a continuing obligation of any future loans which were made, and in the Answer you have admitted --

MRS. EISENBERG: [INTERPOSING] Yes, that is correct, the guarantee survives; but the obligation upon which it was given ended in 1972.

MR. ZWEIBEL: Then there was a subsequent obligation in 1973 to which the same guarantee applied. Is there any question about that?

MRS. EISENBERG: No, sir.

MR. ZWEIBEL: In other words, it is admitted that the obligation also applied to the loan made on June 14, 1973?

MRS. EISENBERG: The guarantee applied to the subsequent application, yes.

MR. ZWEIBEL: And there is due and owing to the bank the monies under that obligation which she guaranteed?

MRS. EISENBERG: Correct.

[WHEREUPON CONTINUING OBLIGATION REFERRED TO WAS MARKED PLAINTIFF'S EXHIBIT VII IN EVIDENCE.]

ADLMAN

BY MR. ZWEIBEL: [CONTINUING]

Q Now, you knew about the loan which was being made in June, didn't you?

A The one you just showed me?

Q No, that was the guarantee you signed in October, 1972. You knew that the bank was going to extend the second loan to the Leesport Company, did you not?

A That part I am not aware of, sir.

Q I show you a copy of a letter and ask you if you remember receiving that letter?

A I never received any mail. If I signed something, I can verify that I signed it when I see it. As far as any sort of mailing on this, I must be honest, I am not at all familiar with it.

MRS. EISENBERG: May I see it?

MR. ZWEIBEL: Yes. Is there any question on it?

MRS. EISENBERG: You may show it to the witness.

BY MR. ZWEIBEL: [CONTINUING]

Q Do you remember seeing that letter, Mrs. Adlman?

A Not really.

MR. ZWEIBEL: May I mark it for identification, please?

THE COURT: Sure.

[WHEREUPON LETTER DATED JUNE 11, 1973 WAS

ADLMAN

MARKED PLAINTIFF'S EXHIBIT VIII FOR IDENTIFICATION.]

Q Do you remember, Mrs. Adlman, whether you and your husband were the owners of property located in Leesport, Pennsylvania, two parcels, both totaling 70.7 acres?

A No, I don't.

Q Do you remember ever signing any papers in connection with that piece of property?

A No, I don't remember signing any of that at all. I don't recall it, to the best of my knowledge.

Q That's all I am asking, the best of your recollection.

Do you, personally, have any papers or records with respect to that?

A No, I don't.

Q Where are you presently living?

A At March Lane, Sands Point, New York.

Q And is that the home that you owned up to October, 1973?

A Yes, sir.

Q And do you hold that under a lease?

A Yes.

Q And you are living there under a lease?

A Yes.

ADLMAN

Q I show you a copy of the lease that was furnished to us. Is this the lease under which you are living at this house?

A Yes, that is correct.

MR. ZWEIBEL: I offer that in evidence.

THE COURT: Let me see it just a moment, please. This is a lease dated 1 October, 1973, between David and Dorothy Adlman, as landlord, and Edward C. and Lois Adlman, as tenants. Let it be marked, if there is no objection, as Plaintiff's Exhibit IX in Evidence.

MRS. EISENBERG: No objection.

[WHEREUPON LEASE REFERRED TO WAS MARKED PLAINTIFF'S EXHIBIT IX IN EVIDENCE.]

Q You were very friendly, were you not, with David and Dorothy Adlman, who are your husband's aunt and uncle?

A I would say we are related. My husband -- actually, my father-in-law has a very large family. There are eight boys and two girls. I can't say we were very friendly or that closely related all the time. We certainly have a nice family relationship. I mean, we got along.

Q That is very fortunate.

ADLMAN

A Yes

Q And you were in financial difficulties in October of 1973?

A I know my husband was very much concerned.

Q He discussed it with you?

A He mentioned that he was going to sell the house to try to take care of his financial obligations, and that I shouldn't really worry about it because he was working on other business transactions, and mortgage commitments and other things that eventually would work out. Perhaps, that at this time he would have to use these funds, and at a later time, perhaps, to buy another house or whatever.

Q You said he was going to sell the house to take care of his financial obligations?

A He wanted to sell the house because he felt it would be the wisest thing to do at that particular time.

Q That's why at the Hearing held on April 30, 1974, the first meeting of creditors, you testified that your husband exercised domain over these funds, is that right?

A Well, actually, he was -- dealing is more accurate. He has really exercised, as you put it, domain of these funds for the many years that we have been married, but actually at the consummation of this sale I, personally, felt at this stage of life and, unfortunately, with my

ADLMAN

husband's poor health record, it was important for my own benefit, as well as my children's, to see that at least I was protected had anything happened to him because he really had suffered very ill health.

Q I would appreciate it if you could be more direct in your answers to my questions.

A I believe I did answer the question. I am sorry if I didn't bring out the point you asked.

Q I didn't ask about your husband's health. So, in effect, this sale was made at his direction because the monies were needed by him, is that correct?

A Well, he felt, at this time, that he was going to sell the house, right, because he felt that we have to sell it now and in the future, maybe be able to do something else.

Q I understand. It was to be sold so he could pay obligations?

A It was sold because he realized we needed the money to keep the family going.

Q Now, at the time of the sale, you were then in financial difficulty?

A Well, I knew he was under tremendous pressure. As I said, never having seen the checking account or never knowing the actual accurate personal affairs -- I knew he was under a tremendous amount of pressure, but he did have

ADLMAN

many things in the wind which he was working on at the time.

Q Financial pressures, would you say?

A Yes, pressures all over with the rising costs of building and everything that was concerned.

MR. ZWEIBEL: I believe the record discloses that the Petition in Bankruptcy here was filed on March 22, 1974.

MRS. EISENBERG: That's correct.

MR. ZWEIBEL: No further questions.

THE COURT: Mrs. Eisenberg?

CROSS-EXAMINATION BY MRS. EISENBERG:

Q Did you ever meet or speak with either Mr. Turner or anyone else at the bank?

A No, I have never seen him before.

Q Did you ever apply for a loan of any kind?

A No, no, I didn't.

Q Either for yourself or for any business?

A No, I never applied for a loan.

Q Did you ever give any personal financial statement to the bank?

A No.

Q Do you recall ever signing anything other than the guarantee of the obligation referred to before -- I don't

ADLMAN

know what exhibit number it is -- but the one given in 1972?

A No, just the one that I saw the signature on.

Q Did you ever correspond with the creditor bank?

A Not at all.

Q Did you ever inform them that you were actively engaged in the business?

A No, I wasn't.

Q Did you ever tell them that any of the statements they have ever received from your husband were your own statements?

A No, because I never knew of the existing statement.

Q Was it a fact that in 1972 and prior thereto, you were a housewife?

A Yes.

Q When you purchased the house in Sands Point, will you tell us what funds were used for that purchase?

A Well, the purchase of the house in Sands Point was on the resale of the last house in Lake Success.

Q Did that come from funds from your own bank account?

A It was really quite a bit from my father as well as some of it from my own.

Q You state that your checking account was in your

ADLMAN

own name and has always been in your own name?

A Always in my own name.

Q And did you receive approximately sixty some odd thousand dollars after the sale on October 12th -- approximately, October 12th?

A Yes.

Q Did you deposit those funds into your own bank account?

A Yes, into my own checking account.

Q And did you pay current bills with those funds, some of it?

A Yes.

Q And did some of the money go to pay for insurance premiums?

A Yes, it did.

Q And did some go to pay for loans that had been made on the insurance policies?

A Yes.

Q And did that just about take care of all the funds that you had received?

A Right.

Q I am talking about living expenses now and personal expenses.

A Right.

ADLMAN

Q Did you give any of that money to your husband?

A No, I did not.

Q Did you give it to any of his business ventures?

A No.

Q At the time -- let's take it back before the sale in October -- in approximately September of 1973, was Ed bringing in his usual amount of money for household expenses?

A No.

Q And were you short of expense money to run the house?

A Absolutely.

Q And did you discuss with him that you needed funds to carry on --

A [INTERPOSING] Yes. I was very upset with all the family needs as well as my own expenses.

Q Did you know that there were insurance premiums that had to be paid?

A Yes, and because I was most concerned because of his ill health and I knew he couldn't be reinsured at another time because of his health condition that existed.

Q Was it a prime concern of yours that his insurance policy might lapse?

A Very prime because I didn't know what would happen

ADLMAN

to me or my family.

Q In discussing this with your husband, did you decide to raise cash either by loan or sale?

A Yes.

Q And did you attempt to borrow money on this house?

A Yes.

Q Were you successful?

A No.

Q And at that time, did you discuss with David and Dorothy Adlman that they lend money to you?

A Yes. I had asked them if they would lend us money, or else take a second mortgage on our house and, possibly, this could help us along for a period of time and then we could possibly, you know, pay them back or whatever; but they wouldn't entertain this thought at all.

He said the only way he would help us -- he was in a financial position, but the fact that he was so much older and he is retired at this time -- the only thing he would do is purchase the house, become the owner of the house, and he wouldn't at all be interested in lending any money.

Q And did you sell the house to him?

A Yes.

ADLMAN

Q And did you receive one hundred twenty-five thousand dollars as the purchase price for this house?

A Yes.

Q And at this time, were you concerned with your husband's general business?

A Yes, because I could see that he looked very depressed; but very often he doesn't really, I should say, confide or tell me his problems because he tries not to upset me, but eventually I could see when this period was coming --

Q [INTERPOSING] You were concerned about it yourself, is that right?

A Yes.

Q Did he tell you about any business reversal at that time?

A No, he didn't.

Q Did he tell you that he had monies that were forthcoming in the future?

A Well, he always liked to look at things optimistically, and I know he was always a very, very hard worker and put in very long hours, and he felt eventually things would get better, and the times were bad; and you know, with the increasing rates and everything else, that eventually things would get better and things might work out.

I know this is not the question, but having

ADLMAN

ulcerative colitis myself for ten years, he has always tried to protect me and not tell me until the actual hour of the happening.

Q Your one concern was to obtain money to pay current bills, is that correct?

A Yes, that's true.

Q And to meet your insurance premiums and loan payments so that they would not lapse, is that correct?

A That's true.

MRS. EISENBERG: No further questions.

MR. ZWEIBEL: If there is no objection, I wish to offer this letter in evidence.

MRS. EISENBERG: No objection.

[WHEREUPON LETTER PREVIOUSLY MARKED PLAINTIFF'S EXHIBIT VIII FOR IDENTIFICATION WAS THEN MARKED PLAINTIFF'S EXHIBIT VIII IN EVIDENCE.]

REDIRECT EXAMINATION BY MR. ZWIEBEL:

Q A series of twelve checks were offered in evidence while your husband was on the stand. I believe you were in Court at the time?

A Yes, I was

Q A number of these checks were drawn to insurance

ADLMAN

companies with notes that they were loans on specific policies?

A Yes.

Q Do you know, for example, when the loan or loans on this policy indicated by a check dated October 4, 1973 and marked as Number V, as one of the twelve checks in evidence, was made?

A I know it is my check and I signed the check, but I can't say I am familiar with, offhand, the actual policy unless I looked at the policy.

Q And what the loans were made for? Isn't it a fact they were made for investment in your husband's business enterprises?

A No. To my knowledge, the loans were really for living expenses.

Q Are you saying now that none of these loans were -- the proceeds of none of these loans were given to your husband for his business ventures?

A Not to my knowledge, no.

Q Now, in 1971, I believe your husband said he earned fifty thousand dollars, and that he had that income; and the same thing I believe he said was true in '72.

Now, I see here that the Guardian Life Insurance Company, there were repayments of loans in the sum of

ADLMAN

twenty-three thousand some three hundred odd dollars. Now, you say that all of this money had been previously borrowed for living expenses?

A Yes; living expenses, helping the children, colleges, many different things along those lines.

Q None of it went to business?

A Not to my knowledge.

Q Did you turn any of that money over to your husband?

A I don't believe I did.

Q And the loans on these policies were made by you or your husband?

A Well, I had to sign them because they are actually -- actually, owning the policies, I have to sign the loan.

Q Did you sign the loan application in each instance?

A Yes, because I owned the policies.

Q Not because. Did your husband sign them, too?

A I know I signed them. Whether they requested he sign them or not, I couldn't honestly say.

MR. ZWEIBEL: No further questions.

THE COURT: Mrs. Eisenberg, anything?

MRS. EISENBERG: I have no questions.

ADLMAN

THE COURT: Thank you very much. You may step down.

[WHEREUPON THIS WITNESS WAS EXCUSED AT 2:40 P.M.]

MR. ZWEIBEL: If Your Honor please, with respect to the deed, I am told that they are on their way here from Pennsylvania. I don't know when we can expect them, but I hope they will be here before four o'clock anyway.

THE COURT: Well, I will be here until five anyway.

MRS. EISENBERG: I don't think they apply in Lois Adlman's matter in any event.

Do you have additional witnesses for Lois Adlman?

MR. ZWEIBEL: I have no additional witnesses. I rest with respect to her.

MRS. EISENBERG: Then I move, Your Honor, to dismiss the Complaint, I believe it is count two. The plaintiff has not made any Cause of Action has not shown that this defendant submitted any financial statement, let alone a false one; has not shown that the creditor relied on any financial statement because none was submitted.

ADLMAN

None was proven to have been submitted by the defendant, Lois Adlman.

I move that this Cause of Action be dismissed.

THE COURT: What Cause of Action do we have left in this case?

MRS. EISENBERG: Two and three.

MR. ZWEIBEL: You have four, too.

THE COURT: We are talking about Lois.

MR. ZWEIBEL: Two and three.

THE COURT: Were there three or four to start with?

MRS. EISENBERG: There were three to start with. The first was dismissed.

MR. ZWEIBEL: It wasn't dismissed. They were preliminary paragraphs.

THE COURT: I will now entertain a motion to dismiss number one because it doesn't pertain to this Cause of Action. I dismiss number one.

Now, number two. Do you wish to be heard, Counselor?

MR. ZWEIBEL: Yes. We have a situation of a family interest in business. I submit that

ADLMAN

is so, and we have a statement, a financial statement given to the creditor bank which represents, on the very face of it, that it reflects the assets of Edward C. and Lois Adlman.

Now, it is not unusual for a husband to participate in the business aspects of it. Mrs. Adlman knew that her husband was in business, and as she said -- as she testified -- when her husband told her to sign the paper which is the continuing guarantee, that she knew it was in connection with his business; and I say that one cannot sit idly by and take advantage of a credit statement submitted by her husband to a lender and hide behind the guise of saying, "Well, I didn't personally know."

Her husband was authorized by her to submit whatever was necessary in connection with this transaction. I, therefore, submit that on that ground -- and I am addressing myself solely to count two -- that the count should be sustained.

MRS. EISENBERG: Your Honor, if they had shown that

ADLMAN

she authorized him to make the statement -- there is no evidence that Lois Adlman gave any statement, made any statement, applied for any loan or even participated in the statement.

THE COURT: I would assume that she authorized her husband to use whatever financial statement was submitted in connection with the loan, but this is not a statement that's even signed by her.

MRS. EISENBERG: That's correct.

THE COURT: Counselor, getting down to the nub of the matter here, I can't see that you have ever shown that there has been a false financial statement.

MR. ZWEIBEL: I intend, upon receipt of the deeds -- I think I can show that the 151.68 acres, where the statement is made of two hundred thirty-two thousand two hundred dollars, is a false statement with respect to that very tremendous asset. As a matter of fact, if I may --

THE COURT: [INTERPOSING] Right now, sir, there is no evidence in this case that this

ADLMAN

financial statement is false in any respect. The typewritten portions have been explained by the witness. There has been no denial of his explanation.

MR. ZWEIBEL: Well, I intend to call --

THE COURT: [INTERPOSING] Look, you rested. Do you want to continue?

MR. ZWEIBEL: May I, please?

THE COURT: Why, of course. But on the evidence you have here now, I would say you haven't made out a Cause of Action.

MR. ZWEIBEL: May I please call Mr. Turner?

MRS. EISENBERG: May I get one thing clear? We are still on Lois Adlman?

THE COURT: Yes, we are still on Lois.

MRS. EISENBERG: If there is to be testimony on the statement that we acknowledge was handed to the creditor by Edward Adlman, then I have to know, Your Honor, -- and since we are using his testimony in both cases -- whether his objections to discharge, which apply to a false financial statement, is under Section 17 or 14.

THE COURT: I will get around to that when we

ADLMAN

conclude our case on Lois.

MRS. EISENBERG: I would be very happy to, unless they confine their evidence to whatever --

THE COURT: [INTERPOSING] Let's give him a chance. You are not particularly prejudiced if he reopens now and I will permit him to reopen now, and we will see what evidence he wants to put in.

All right, Counselor. Call your witness.

[WHEREUPON JOHN E. TURNER WAS CALLED TO TESTIFY ON BEHALF OF THE CREDITOR AT 2:45 P.M.]

J O H N E. T U R N E R, having been duly sworn by the Bankruptcy Judge, was examined and testified as follows:

THE COURT: Be seated, sir.

Will you give your name and address, please, to the reporter?

THE WITNESS: John E. Turner; 1515 College Avenue, Reading, Pennsylvania.

THE COURT: Sir, are you connected with the Bank of Pennsylvania?

THE WITNESS: Yes, I am Assistant Vice-President of the bank.

TURNER

THE COURT: All right.

DIRECT EXAMINATION BY MR. ZWEIBEL:

Q And what was your position in October of 1972?

A I was an Assistant Vice-President.

Q Do you have any personal recollection of Mr. Adlman coming into your bank in connection with an application for a loan?

A Yes, I do.

Q And on October 13th, was a loan made by your bank to him?

THE COURT: What year, sir?

MR. ZWEIBEL: I'm sorry, 1972.

A Yes, about that date a loan was made; yes.

I would like to refer to some notes, if I may.

I believe a loan was made on October 12, 1972.

THE COURT: Are you sure of that date, sir?

THE WITNESS: No, I'm sorry. That was October 23rd the loan was made. October 23, 1972 was the date of the loan.

THE COURT: How much was it?

THE WITNESS: Twenty-five thousand dollars.

THE COURT: Who was it made to?

THE WITNESS: Leesport Gardens Company.

THE COURT: Then, it is not made to Mr. Adlman?

TURNER

THE WITNESS: That's correct.

THE COURT: I am just correcting your testimony. I want it to be straight. Leesport Gardens what?

THE WITNESS: Company spelled out.

THE COURT: Is that a corporation or a partnership, sir?

THE WITNESS: That I understood was a limited partnership.

THE COURT: Thank you very much, sir.

BY MR. ZWEIBEL: [CONTINUING]

Q I show you a document dated October 23, 1972, and ask you was that the note that was executed at the time in connection with this loan?

A Yes, it is.

MR. ZWEIBEL: I offer it in evidence.

THE COURT: Is it necessary, Counselor?

MR. ZWEIBEL: They have admitted the obligation.

THE COURT: They said the obligation is paid, so why fool around with that?

Q Now, subsequent to that, this obligation was paid, is that correct?

A That's right.

Q And subsequently, Mr. Adlman came to your office,

TURNER

is that true, in June of 1973?

A Yes.

Q And he submitted to you, at that time, a financial statement, is that correct?

A Yes, that's correct.

Q And I now show you Plaintiff's Exhibit III in Evidence and ask you whether this is the statement or a copy of the statement that was submitted to you at that time?

A Well, this is the original statement that was submitted.

Q He came to see you at the offices of the bank in Reading, Pennsylvania?

A Yes, that's correct.

THE COURT: Are you referring to Plaintiff's Exhibit III, sir?

MR. ZWEIBEL: Yes, I am. I believe that's the statement dated March, 1973.

Q At that time, did he discuss the loan which he wanted to make?

A Yes.

Q And that was in the sum of twenty-five thousand dollars, is that right?

A That's right.

MR. ZWEIBEL: I don't believe that there is any

TURNER

question but that the loan was made and the monies paid to Leesport Gardens Company, is that correct?

MRS. EISENBERG: That's right. If you would just put into the record when the loan was made.

MR. ZWEIBEL: Yes, so I won't have to offer the documents in evidence. June 14, 1973, in the sum of twenty-five thousand dollars under the continuing guarantee of both --

THE COURT: [INTERPOSING] Now, you are testifying.

MRS. EISENBERG: I object.

THE COURT: Objection sustained. The question was when was the loan made. Let the witness answer.

BY MR. ZWEIBEL: [CONTINUING]

Q When was the loan made?

A To the best of my recollection, the loan was made June 14, 1973, but I would like to see the note.

June 14, 1973 to Leesport Gardens Company in the amount of twenty-five thousand dollars.

Q And this is signed on behalf of the --

A [INTERPOSING] Leesport Gardens Company, by Edward C. Adlman, General Partner.

THE COURT: That's Plaintiff's Exhibit II, is it

TURNER

not?

MR. ZWEIBEL: It is.

THE COURT: I would appreciate it if you would refer to exhibit numbers when you question the witness. It will simplify the record considerably.

MR. ZWEIBEL: I'm sorry.

Q At that time, did you have any discussion with Mr. Adlman concerning the statement which he furnished to you then?

A No.

Q Did he, at that time, submit to you an appraisal of any kind with respect to any of the property listed?

A No, I don't recollect any appraisal. We never had any copy in our file and I don't recollect seeing one.

Q At that time, did he make any reference to the assets listed on the statement referable to the 151.68 acres in Spring Township, Reading, Pennsylvania?

A Mr. Adlman and I didn't discuss any specific items in his statement on that day when this was submitted.

THE COURT: Now, what date are you talking about?

THE WITNESS: June 11, 1973, when that statement was given to me, the personal statement of Edward C. Adlman, which was given to me on

TURNER

June 11, 1973.

Q This was the letter consummated by your loan in payment to the Leesport Gardens Company dated June 14, 1973, is that right?

A Well, that loan was made three days later.

Q Now, on June 11th, you say no estimate was furnished to you concerning any of the real estate; and more particularly -- not estimate -- the appraisal of 151.68 acres?

A No appraisal furnished to us. We never did have one.

Q And was there any discussion at all with respect to any of the assets which are listed on this statement?

A There was no discussion of any of the assets on the statement.

Q And it was on the credit of this statement that you advanced or made the loan to Leesport Gardens Company?

A That was one of the considerations. We would not have made the loan without the statement of Mr. and Mrs. Adlman showing substantial assets and net worth.

Q And which are reflected and represented on this Plaintiff's Exhibit III in Evidence?

A That's right.

TURNER

Q Now, did the time come when you saw Mr. Adlman after June 11, 1973?

A Yes, several times; but I can't pinpoint dates of any kind. It is difficult.

Q I am now referring to a date prior to and inclusive of June 14th. Did you see him after June 11th and before June 14th?

A I don't know. I can't remember.

Q Did you see him on June 14th, the date that the loan was consummated?

A I can't remember. The loan may have been consummated by mail. He may have mailed the note in. We may have consummated the transaction by mail. I just don't know.

Q I show you Plaintiff's Exhibit VIII in Evidence, a copy anyway, of a letter on the letterhead of the Bank of Pennsylvania. Was this letter mailed at your request and through your office to Mrs. Adlman?

A Yes, it was.

Q And was it mailed on or about June 11, 1973?

A It was mailed on June 11, 1973.

MR. ZWEIBEL: This was already in evidence.

Q Now, do you remember, at any time that you saw Mr. Adlman after June 11, 1973, that you discussed any of the

TURNER

items listed on the statement which was furnished to you?

A No.

Q Now, on this Exhibit III in Evidence, there are notations or markings. Would you please look at the item of three hundred thirty-two thousand two hundred, and you have a check mark there. What does that reflect?

THE COURT: Before he answers that, will you ask him who made the markings?

Q Who made the markings?

A I made those markings.

THE COURT: Now, you can go ahead.

Q When did you make those markings?

A I am not sure just when I made those markings. It was not at that time when the statement was given to us. It was some considerable time later.

I hadn't had occasion until today to think about these markings for a long time. The more I think about this, the more I believe these markings were made when we heard some rumors that Country Club Apartments in Reading was being foreclosed. I thought I would look into the situation and see what assets might conceivably be affected, and what values there still might be supporting the guarantee under which we were making the loan. That I think would have been in -- I am guessing -- September-October, 1973.

TURNER

THE COURT: Let me interrupt you a moment. Do you have the bank's file with you?

THE WITNESS: No, I only have certain portions -- the original file, no.

THE COURT: I think you should have brought the original papers to a trial.

THE WITNESS: They were turned over to counsel.

THE COURT: Do you have the original papers?

MR. ZWEIBEL: We have a number of original papers, yes, Your Honor.

THE COURT: Will you give them to the witness so he can establish something that's original and something that's not?

What I would like you to do, sir, is go through those papers there and show me an original of the personal financial statement which is Plaintiff's Exhibit III in Evidence, and which purports to be a financial statement as of March 15, 1973.

THE WITNESS: I believe that's the one.

THE COURT: This document which is marked Plaintiff's Exhibit III in Evidence as of this date is the original document that you received when you got these papers?

TURNER

THE WITNESS: I believe that's correct, yes.

THE COURT: And at the time you received that, you gave Mr. Adlman a receipt for it?

THE WITNESS: No. We don't customarily give receipts for financial statements.

THE COURT: I call your attention to the lower right-hand side and ask you what that notation is.

THE WITNESS: That is written in my handwriting and initialed by me, "Received by hand, Edward C. Adlman, June 11, 1973."

This is a customary method in many banks, and there are other methods of marking statements as to the date they are received and things to that effect.

THE COURT: All right, Counsel, go ahead.

MR. ZWEIBEL: Your Honor, at this point I find it difficult to proceed without the deeds which are being produced today, which demonstrate what the property consisting of 151.68 acres in Spring Township, Reading, Pennsylvania, was valued at -- what the consideration was paid, rather, on March 22, 1973. I further submit --

TURNER

THE COURT: [INTERPOSING] Do you have any testimony that would enlighten us with respect to the consideration, sir?

MR. ZWEIBEL: At this moment -- I inquire, I believe, from Mr. Adlman about it, and I don't remember -- I think he said ninety thousand dollars.

MR. ADLMAN: I said eighty or ninety thousand dollars.

MR. ZWEIBEL: That he paid. The record, I am told, will disclose that contrary to his testimony, the grantors were Darwin C. Heisey and Della Heisey to -- I want to correct my earlier statement.

THE COURT: Let's not make a statement until you are prepared to make an accurate statement.

MR. ZWEIBEL: Then I would read it from a record.

THE COURT: I would rather have you make an accurate statement --

MRS. EISENBERG: [INTERPOSING] Since this is in the Lois Adlman matter and since all of this testimony refers to Mr. Adlman's case, I would not mind holding it so that we can

TURNER

reintroduce it when we get back to Mr. Adlman's case, at which time he will probably have the documents you are referring to.

I would like to cross-examine Mr. Turner on the Lois Adlman matter and reserve my cross-examination as to the Edward Adlman matter.

THE COURT: As soon as counsel is through with his witness, then we will let you cross-examine.

MR. ZWEIBEL: If Your Honor please, the reason I put him on at this point was because of Your Honor's comment with respect to the fact that there is no proof in the record of any fraudulent statements or misrepresentations.

THE COURT: That's rignt.

MR. ZWEIBEL: And so I have introduced his testimony at this time, and I say that without the deeds I am, in a sense, hamstrung because I submit that if a deed is given to Mr. Adlman reciting -- and I am told that the document will show what the consideration was --

THE COURT: [INTERPOSING] Counsel, I understand your point perfectly well, but do you have any

TURNER

further questions of this witness?

MR. ZWEIBEL: At this point, no, Your Honor.

THE COURT: All right. Cross-examine, please.

CROSS-EXAMINATION BY MRS. EISENBERG:

Q Mr. Turner, did you ever meet Lois Adlman?

A No.

Q Had you ever spoken to her?

A No.

Q Had you ever requested her to furnish a financial statement?

A Through Mr. Adlman. I told him a financial statement of himself and his wife to support their guarantees would be necessary, but that was to Mr. Adlman.

Q You never made such a request in writing from Mrs. Adlman?

A No.

Q Or by phone?

A No.

Q Had Mrs. Adlman asked for any loan?

A No.

Q Was any statement that was furnished to you by Mr. Adlman signed by Lois Adlman?

A No.

TURNER

Q Did Lois Adlman ever represent herself to be an active officer in any of the businesses of Mr. Adlman?

A No.

THE COURT: He had no dealings with her, so the answer is self-evident.

Q Did you, in fact, only obtain a signature of Mrs. Adlman on the guarantee that has been introduced, of 1972?

A You mean is that the only time I saw her signature?

Q Well, is that the only time you saw her signature?

A No.

Q My question is was that the only document that was signed for your bank by Mrs. Adlman?

A No.

Q What else did she sign?

A The copy of the limited partnership agreement as a limited partner -- if I may refresh my memory.

Q Well, did she sign it on your behalf?

A On our behalf -- she signed it as one of the limited partners. The general and limited partners had signed that partnership agreement. A copy was given to us by Mr. Adlman.

Q But that was signed prior to your seeing it?

A Oh, it wasn't signed in my presence, no.

Q It wasn't signed in your presence?

TURNER

A No.

Q And not at your request?

A No, except we did want the partnership agreement with the signatures of the partners.

Q My question to you is at the request of the bank, what were the signed documents submitted to you by Lois Adlman?

A That partnership agreement -- at the request of the bank?

Q At the request of the bank.

A The guarantee of the owners of Leesport Gardens Company. As far as I recollect, that's the only thing.

Q All you ever obtained from Lois is the guarantee which is now in evidence, is that correct?

A That's correct.

Q Do you have any independent knowledge that she had any knowledge as to these statements furnished by Mr. Adlman?

A No.

Q Did Mr. Adlman tell you that he had obtained permission of his wife to show you these statements or at least submit them on her behalf?

A Yes.

Q What did he say?

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A I asked him if he and his wife were both behind the loan. We wanted her behind it; and he said yes, and that this was their personal statement, and she knew that statements were being submitted to the bank, as part of our overall conversation, but there was no specific question about does your wife know about this or doesn't she. It wasn't that type of thing.

Q Did you usually request a signed financial statement by the party giving it to you?

A In many cases we do.

Q Why not in all cases?

A Well, there are variables here. For instance, I didn't ask Edward Adlman to sign. We had made many checkings, we had had some experiences with him and information we got from other people about his character, reputation and things of that kind. We felt that we could rely on these statements that he submitted to us.

He was a stranger when he first came in, so I followed a few more of the stricter rules of procedure to make sure who he was and all that.

Q If he was a stranger to you when he came in to apply for the loan -- are you talking about 1973?

A No, in 1972; October 5, 1972 I believe is the first date that I met him.

TURNER

Q But that loan was repaid, is that correct?

A Yes, that first loan was repaid.

Q When he came to apply for additional loans, did you request an additional personal financial statement?

A Yes. I told him I would like to -- as a normal thing -- and up-to-date statement seemed to be in order. It is done with most borrowers; all borrowers, in fact.

Q And did he hand it to you, himself, on June 11, 1973?

A Yes.

Q And did you sit down and discuss it at that time?

A No.

Q Did he just hand you a statement and make no comments?

A Yes. He told me how good the operation was going. There had been some delays in construction and getting the mortgage money, and that's why he needed another loan for a period of two or three months; that he had some arrangements in effect which would enable him to repay the money within the next three or four months, before the end of the year.

Q But what did he say about the statement that he handed you?

A He didn't say anything in particular.

Q Nothing at all?

TURNER

A No, no. I knew he was coming in. I think we had talked a couple of days before, and if I recollect correctly, he had come in to see his attorney in Reading, and he had said he would want a loan and he would come in. I told him to bring an up-to-date financial statement as a normal procedure.

Q What did you do besides check the statement? Did you check with his attorney?

A Check what?

Q Well, what else did you do besides take this statement that he handed you? You said you did other things to check him before you --

A [INTERPOSING] Oh, I had done this back in 1972 when he had first come to the bank. We followed our normal procedures in making credit checkings on people.

He had submitted a list of people who knew him, and told us about a number of construction jobs he had done, and he said we could check with a couple of banks from whom he was borrowing money at the time, and we did.

We checked with banks, we checked with people in Reading who had known him, and we got, generally, very favorable responses and recommendations.

Q And when was this done?

A This was done before the first loan went on in

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October, 1972.

Q Did you do any checking after that first loan?

A We didn't do any direct checking after that first loan, no. We had talked with his attorney, John Hoffert, who had introduced Mr. Adlman, and he told me substantially the same story that Mr. Adlman did about the progress of construction.

Q When was that conversation?

A With John Hoffert?

Q Yes.

A Oh, there was more than one. We would meet on the street, and I would say, "How is Ed Adlman?" And things like that.

Q When was the latest one before June of '73?

A I couldn't be sure; a week, two weeks, a month.

Q But it was shortly before Mr. Adlman handed you the statement dated June 11, 1973?

A No, the statement I considered to be dated March 15, 1973, just for the record. You see, it is as of that date, but he gave it to us in June. This is a customary time lag in getting statements.

Q When was the loan made pursuant to this statement of June 11, 1973?

A I think that was established as June 14th, three

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days later.

Q That's right; and would you have made that loan earlier?

A You mean in May?

Q Yes.

MR. ZWEIBEL: I object, if Your Honor please, as to what they would have done.

THE COURT: I will let her ask. That's overruled.

MRS. EISENBERG: I will rephrase the question.

Q When did you request this statement from Mr. Adlman in '73?

A Well, when he first contacted us about making another loan. He had paid off the first loan early in May, I believe.

Q When was that?

A Early in May.

Q May of what?

A 1973.

Q Oh, in May of 1973?

A He took it in October and paid it off. I think this has been established. Then several weeks later, he called and said he would like another loan, and I said, "Well, among other things, bring in a financial statement and, of course, the guarantee of your wife continues in

TURNER

existence."

These are the routine types of things.

Q Well, tell me what the routine is. Besides asking for a personal financial statement, what else did you ask for in May of 1973?

A Well now, it might have been June, '73.

Q All right, even June, '73. What else did you request?

A We didn't request any documentary or written papers of any kind except the statement; of course, a note be executed. I asked him how the construction was going.

I didn't have to ask too much because Ed -- we did know each other on a first-name basis then -- Ed just talked so volubly about the whole thing, I just never had any need to ask him anything particularly.

Q Were you prepared to give him the loan at that time?

A I was prepared to give him the loan if there had been no unusual change in the certain financial circumstances on which we had based the previous loan.

Q And did you find any unusual circumstances?

A Any unusual change in the circumstances?

Q Yes.

A There didn't appear to be any. It is a simple

TURNER

statement which showed substantial assets, real estate and other assets.

Q So, in essence, you were relying on a prior statement --

A [INTERPOSING] No, I was relying on the fact that right here he still had substantial assets.

Q Yes, all right. Along with that, you were also relying on prior statements made to you by Edward Adlman, is that correct, or did it have nothing to do with your decision to make the loan?

A In making loans, you rely on a number of different things. You rely on the capacity of the individual, the character, the resources he has, the progress of business operations as you can best determine them; and without certain things, you wouldn't make a loan. Certainly, without resources to support the loan in case his business operations didn't work out, you wouldn't make the loan.

Q Did you take into consideration his prior statement and his having paid the prior loan, is that correct?

A Yes, we would take that into consideration.

Q And would you have taken into consideration conversations you had with Mr. Hoffert?

MR. ZWEIBEL: May we identify who Mr. Hoffert is, please?

TURNER

THE COURT: I know who he is, his attorney. He said he met him on the street and talked with him, "Hi, Hoffert."

Q Were you furnished with a list of references by a Mr. Adlman before June of 1973?

A Yes. That was in October when we first met each other, October, '72.

Q Well, did you check any of those references?

A We did. I thought I said that before, yes.

Q And when the time for a new loan came about, did you again check with any of these references?

A No.

Q How soon before June of '73 had you had a conversation with Mr. Hoffert?

A I cannot say.

Q Was it a week or ten days?

A A couple of weeks, a month; something like that.

Q And at that time, did you ask him about Mr. Adlman's business operations?

A I can't say specifically word for word what we said, but I believe I asked him if he had seen Ed and did he know how the operation was going, and when was Ed coming back into town; and things of that kind.

Q And what did he answer you as to how Ed was

TURNER

doing in his business?

A He gave me the impression that there had been some delays because they were waiting to -- there had been delays in closing some kind of commitments. I believe it was a mortgage commitment to get funds which would start to move the operation along.

Now, I can't be sure of details. This is two years ago.

Q In general, did you get a favorable impression of Mr. Adlman's business at that time from this conversation?

A I got more of an impression that Hoffert wasn't quite sure of what was going on. I wouldn't rely on what Hoffert told me without seeing Ed Adlman and finding out from him how things were.

Q Would you tell me what impression you got from that conversation? I didn't quite understand it.

A I got the impression -- well, Hoffert may not have been up-to-date or wasn't sure. He was kind of guessing.

Q Did you discount that conversation?

A It was nothing really definite. What do you mean by discount it?

Q Well, you say you got the impression Mr. Hoffert didn't really know what was going on. Did that put you on

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notice to look into it elsewhere?

A There was no need to look into it. I guess the loan had already been paid or was -- yes, the loan was already paid, I guess. So, this must have been within the month before that.

Q You are talking about the first loan had been paid?

A Yes, I think that had already been paid.

Q Had you already been requested to supply a second loan when this conversation took place?

A No. I don't recollect we had any request at that time, no.

MRS. EISENBERG: I believe you have Creditor's Exhibit III in front of you. Your Honor, I see we are going into Edward Adlman.

THE COURT: That's all right.

Q With the notations that you see penciled or written in ink alongside the figures under "real estate," were they made by yourself?

A They were made by me, yes.

Q Would you say they were made approximately June 11, 1973?

A No, they were not.

Q Were they made before the loan was granted, which

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is June 14th?

A No, they weren't.

Q When were they made?

A I think they were made sometime in September about. I can't be sure of just when.

Q Going back to --

A [INTERPOSING] That's kind of my thinking here by these notations here and what have we.

Q On June 11, 1973, did Mr. Adlman hand you this statement?

A Yes.

Q And did you have any conversation at all with respect to this?

A Yes, we had a conversation.

Q And what was that conversation, referring to the statement?

A No.

Q You didn't discuss the statement at all?

A We didn't discuss any particular item in the statement that I recollect. I took a quick glance at it. I believe Ed was in a hurry, and he generally was.

I believe, at that time, I just took a look at that statement and laid it aside all the time when Ed was talking. He is a voluble talker. He was telling me about the

TURNER

operation, the great prospects, and a lot of other things. There was so much, I could hardly absorb most of it.

Q Did you look at the statement another time before making the loan?

A Yes, I looked at it afterward.

Q When?

A That afternoon.

Q The same day, but not in the presence of Mr. Adlman, is that what you are saying?

A Yes. I looked at that at the time I was getting ready to write the letter to Mrs. Adlman.

Q And that letter states, in essence, that she is still under the guarantee that she had submitted, is that correct?

A I think it states that very specifically.

Q Does it state anything else?

A Well, you have a copy of the letter I believe.

MRS. EISENBERG: May I see it?

THE WITNESS: I remember I was looking at this --

Q [INTERPOSING] Can you point out to me where it says anything about what you have just stated?

A Well, "Such loans if made will be granted partly on reliance of the guarantees of yourself and Mr. Adlman."

Q When you say the guarantees --

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A [INTERPOSING] I reminded her, "Last October, you guaranteed a loan. That loan has since been paid. We are regarding another loan for Leesport Gardens Company. That first guarantee is still in effect."

Q Right. Were you telling her, after looking at the statement on the same day and in the same breath, that what you were relying upon from Lois Adlman was her guarantee from 1972 and Mr. Adlman's guarantee which you had in your possession?

A We were relying on a guarantee which we had in 1972.

Q That's all I was asking.

Now, what else did you rely on besides the guarantee in June of '73?

MR. ZWEIBEL: You mean other than the credit statement?

MRS. EISENBERG: I mean other than the guarantee. I would like him to enumerate.

A Edward Adlman's reputation, and not much else.

MRS. EISENBERG: Thank you very much.

THE WITNESS: The statement and the guarantee -- the guarantee -- the guarantee as supported by their financial statement, and Ed Adlman's reputation as being able to do the job. Those

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were the two main factors in this loan.

BY MRS. EISENBERG: [CONTINUING]

Q In 1972, when he made a statement for you, did you ask him to sign that statement?

A Yes.

Q And did he sign it?

A Yes.

Q And in 1973 when he handed you the statement of June 11, 1973, did you ask him to sign it?

A No.

Q You didn't ask him?

A No.

Q Well, did it matter whether he signed it or not?

A It mattered a lot more when he was a stranger, and now that I knew him, I thought he had a reputation as an honest individual. I should, as a matter of banking practice, I should asked him to sign it. I think it was an oversight because he was in a hurry.

Q In 1972, when was the loan actually made to Leesport Gardens?

A Well, I think we saw that was October 23, 1972. That first loan, is that what you are asking?

Q Yes.

THE COURT: The loan was made October 23, 1972?

TURNER

THE WITNESS: That's correct. That loan was paid May 23, 1973.

BY MRS. EISENBERG: [CONTINUING]

Q And the statements that were signed by Mr. Adlman and submitted to you were signed as of October 5, 1972? I show you a copy of it. Is that correct?

A Well, I do have a photostat of it here. Yes, that's correct.

Q And between October 5, 1972 and the time that the loan was made, did you check Mr. Adlman's references?

A Yes, some of them. We didn't check every name he gave us. We checked several names who we thought were responsible people.

Q After you received the statement in 1973, did you do any checking independently?

A No.

Q You did not?

A No, we didn't think it necessary. We may not and do not habitually check a debtor every time you put a loan on. You check them from time to time. Certainly, at the inception of a relationship when they are strangers, you may check them. Once you establish certain things, character, back history, capacity and all of that sort of thing, then you do less of that checking with outside parties;

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and of course, you get a little knowledge of the person, themselves.

In cases, these are variables, quite variable.

Q Getting back to this statement, if you will look at Creditor's Exhibit III -- you placed a check next to the three hundred thirty-two thousand three hundred dollar evaluation?

A Yes.

Q What does that mean?

A That meant to me that it looked as if it is probably an asset on the statement that could be relied on.

Q Do you recall ever having been given an appraisal by an outside independent appraiser?

A I do not. I am sure we never got one. We have never had it in our files. We certainly would have had it.

Q Then, did you come to this decision that this was probably an appropriate evaluation on your own?

A If he has got a mortgage with two hundred fifty thousand dollars in it, then the property would have to be worth in the area of three hundred thirty-two thousand.

Q That was your own interpretation of the facts, is that correct?

A Yes.

Q Now, following the next figure, there is a

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40 after two hundred ninety-three. What does represent -- did you make those notations?

A Yes, I did.

Q What does that represent?

A That represents the fact that there was not two hundred ninety-three thousand that we could look forward to if we had to rely on the assets of Edward C. Adlman. It was more like forty thousand dollars.

Q And the next figure where it says two hundred twenty-five thousand dollars, where there is a zero here, is that your notation?

A That is my notation.

Q What is your interpretation of that?

A My interpretation of that is something had happened at Country Club Apartments. I had heard they were in trouble in one way or another, and it looked as if, possibly, that was an asset which wouldn't be of any value to us in support of our loan, Leesport Gardens and the guarantee.

Q When did you pull out this statement and review it the same way you just stated to me?

A I believe it was in about September, October. I don't recollect at this time right now. I just can't be sure of the dates.

Q I am going to show you Creditor's Exhibit Number I,

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a 1972 statement.

A Yes, that has some markings, too.

Q Now, at the time Mr. Adlman gave you this statement -- are these markings in your own handwriting?

A Yes, those are in my handwriting. They are only partial notations of a whole lot of things which he was saying.

Q And were these notations made at the very same time that he handed you the statement?

A They probably were. I would say yes, yes. He was there at the time, and we were discussing these items, and these notations were made as a result of our discussion of the items; and I, if I might guess -- because Mr. Adlman's testimony and mine are so at variance -- when he said we discussed various items, he means at the first meeting.

Q Wasn't it your policy when somebody brought you a statement, to review it at the time with that party sitting in front of you?

A Yes, and that's what I did in this case the first time I met Mr. Adlman, the first statement I received.

Q And didn't you do the very same thing in June of 1973?

A Oh, no. He came in as a stranger with that statement, and we had known him by now. He had paid off a

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loan. We had confidence in him. He, apparently, was a man of substance. All our checkings indicated that, and I didn't feel it necessary to check in the same way on the details of the statement.

Q Did Mr. Adlman make a statement to you at the time that he gave you the written statement that the printed figures represented the book value as of approximately March of '73, and not the market value of the date that he handed you the statement?

A First it was understood between us that these were values as of March 15th. The way Ed Adlman talked, they were worth now in June more than they were in March.

Q Did he say that it was exactly March 15th, or approximately March 15th?

A I took them to be exactly March 15th figures. Whether he said exactly or made some qualification on that, I don't know. When you see March 15th on a statement, that's what you mean. I wouldn't expect those figures to be May 15th or February 15th. They might be March 16th or 12th, it is possible; but we are taking them as of that date.

Q But there was no statement that it was exactly March 15th. Was there a statement to you or did you understand, either one, that this was given as of approximately March of 1973?

TURNER

A I was assuming that it was exactly March 15th and no other date. That's the date on the statement. It is a usual type of date, the 15th of the month, the 1st of the month, the end of the year, and things like that. There was no reason to question the date. There would have to be something unusual.

Q You never asked Mr. Adlman to sign this statement?

A No.

Q And yet you made the loan a day or two days later, or three days later?

A Yes.

Q Do you usually make loans on unsigned personal financial statements?

A Quite frequently. There is nothing hard and fast about getting a signature on a statement. A lot depends on whether you know your people and what you think you can depend on.

Now, this statement, for instance, it was less than a year after the other statement we had gotten. We did know that Ed was involved in Country Club Apartments and Leesport Properties. He told me many times -- not many, but two or three times in the interim, of the additional acreage in Leesport and Spring Township, and things like that. It was not necessary to ask him.

TURNER

Q So, you had relied, really, on the fact that you had gotten, first, statements, checked it out, that the loan had been repaid and that there was a general impression that this was a good debtor to make a loan to? Would that be an accurate statement?

A That's part of the statement. There were other tbings which were relied on. He gave us a statement which showed substantial assets and increasing assets. He had a good reputation.

Q If the statement date which we are referring to, Creditor's Exhibit III, had been marked April 1st, for argument's sake, hypothetically, and it had been handed to you on June 11, 1973, would that have made any difference to you as to the determination.to give the loan to this?

A That statement by itself, no. That fifteen days' difference, no, I don't see how it could make any difference.

Q And was there any conversation as to when that personal statement was actually of?

A Well, I am trying to understand. The statement was as of March 15th.

Q Was there any statement to you that this had been prepared by an accountant and it may have been March 16th or 17th, or it was approximately of that date? Had you been so informed?

TURNER

A Well, I think if Ed Adlman came in with a statement and said, "This is the March 15th personal statement and it isn't March 15th, but some other date," I would say, "What is the date?"

I would expect to be shown the facts, shown the date and all this type of thing.

Q You were concerned then with a statement as of the time it was delivered to you, as of June 11, 1973, is that correct?

A I didn't get the first word or two.

Q What you were concerned with was a statement that would be accurate as of the date that it was handed to you and upon which you were going to decide whether to grant this loan?

A Yes, a recent date.

Q It didn't matter whether it was six weeks, four weeks or three weeks prior?

A That would have to be a factor. There would have to be something unusual about the situation for it to be a factor.

Q Were you the sole deciding factor on whether to make a loan or not to make a loan to this man?

A You mean did I have the authority to do it in my own judgment?

TURNER

Q Yes.

A Yes.

Q And you used your own judgment?

A Yes.

Q Did you have anyone else review the matter to determine whether a loan should be made or not?

A Not this loan, but the original loan I did.

Q What did you do on the original loan?

A After I got all the facts and information together, after our checkings, I discussed it with our senior accounting officer.

Q Who is that?

A Mr. Ernest K. Salzer, Senior Vice-President in Charge of Commercial Loan Department.

Q Is that after you had checked on the references and gotten additional data, and things of that sort?

A Yes.

Q And then between the two of you, you decided to grant the loan, is that correct, on the first instance?

A Not between the two of us. I told him that this man had been introduced a couple of weeks ago by John Hoffert. He had done business in the area before, and now this is a very general type of thing. We made credit checkings. At least two other banks knew him and recommended him. He had a

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substantial net worth.

Leesport Gardens was a new operation. I believe it had only recently been formed, and we normally don't want to make loans to new businesses. It is just one of the higher risk factors in any loan, but particularly in real estate ventures; but that Edward Adlman had a substantial net worth and seemed to know his business, and I felt I was going to grant the loan unless the senior granting officer had some other opinion.

Q Then, from your checking, you determined at this time in '72, that everything seemed all right and all the statements seemed accurate, and you therefore made that loan at that time, is that correct?

A Everything regarding Edward Adlman seemed all right. Lessport Gardens wasn't worth five cents on its own, just to make sure --

Q [INTERPOSING] In other words, at the time you gave the loan in '72, you were more concerned with Mr. Adlman's general financial picture?

A No question. Without him behind it, he and his wife and the statement, we wouldn't have done it at all.

Q But in 1973, you relied on the checking that you did in 1973?

A No. You don't check customers out every few

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months. You don't check customers out every few months. Normally, banks make checkings on their customers about once a year, depending on circumstances. There are many variables, of course.

Q This was a very short time after the first statement and loan pursuant to that statement, is that correct; about nine months?

A Eight months, yes.

Q So that you took into consideration the first statement as well; is that correct?

A I took into consideration that the previous statement and this statement showed a continuity. If they hadn't, then they would have raised some reasons for possibly asking questions that weren't otherwise asked.

Q And at the time that you gave the loan, you saw no conflict with the statement, is that correct?

A I don't remember any conflict -- conflict is a matter of verbiage.

Q Were there any doubts in your mind in giving the loan to --

A [INTERPOSING] No, I was more certain of that loan in June, '73 than I had been in October of the previous year.

Q Why were you so certain?

TURNER

A Because we knew Ed Adlman by then, because his assets were continuing to increase, felt more comfortable with him.

Q How did you know that his assets were continuing to increase? Did you know it independently?

A I didn't check these asset items on the previous statement in great detail. I felt I knew Ed Adlman. I asked Ed mostly -- I wanted to establish some liquidity at that time, his being a stranger, and maybe we would have to do something fast or quick, or something like that.

Q Did you also rely on Mr. Hoffert's statements about Mr. Adlman?

A Are you talking initially, when I first met Mr. Adlman?

Q No, I am talking about in '73, April, May, June?

A Not particularly, no.

Q Were you in touch with any bank at that time to check upon Mr. Adlman's personal financial statement?

A No. As I said, we didn't make any outside checking at that time.

Q On June 11th, at the time that the statement was handed to you by Mr. Adlman, did you, at that very same time, while Mr. Adlman was there, hand him a note signed in blank date?

TURNER

A You mean another note or other than the one on the books?

Q Well, the one that is dated June 14th, was that signed -- when was that signed by Mr. Adlman?

A I can't recollect. I know the note you mean. To say exactly what date and what time, I don't know.

Q Well, did you hand him a note the same time that he handed you the statement?

A I can't remember. I would presume so because I can't remember anything else, and that would be a normal type procedure, to give it to him at that time.

Q Did you hand him a note without looking at the statement?

A I may have had the note ready when he came in presuming that when he brought a statement that -- unless there was some change in the situation with his financial statement, I was prepared to make another loan unless I saw something to make me wary, or something like that, when he presented his statement. It might have been a simultaneous thing.

I may have looked at the statement first, I may not have. I know I looked at the statement before the loan was put on the books.

MRS. EISENBERG: I have no further questions of this

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witness, Your Honor.

THE COURT: I would like to ask the witness a question.

Plaintiff's Exhibit I, I believe, a statement dated May 1, 1972. That's the first statement we are talking about?

THE WITNESS: Yes.

THE COURT: I call your attention to the real estate section there and the Leesport property in particular, where you made a notation "Cost one hundred thirty." I assume that's one hundred thirty thousand dollars, is that correct?

THE WITNESS: Yes, it is supposed to be one hundred thirty with an m with a line through it. That's supposed to be thousand.

THE COURT: Was it your understanding that he owned that fifty-acre tract and that it cost one hundred thirty thousand?

THE WITNESS: Yes, that's right. I asked him specifically that. This is on his first statement. I asked him specifically, "Well, it is worth two fifty market value. Is that what it cost?" He said, "No, it cost one

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hundred thirty, but now it has been upgraded."

THE COURT: Do you see a mortgage on that same property of sixty-two thousand five hundred dollars?

THE WITNESS: Yes. I asked him what that was.

THE COURT: And you were satisfied that was an obligation of the property, is that right?

THE WITNESS: Yes.

THE COURT: When you got around to Plaintiff's Exhibit III, that is the statement of March 15th, I assume you look at the Leesport property and noticed that it was 70.7 acres, did you not?

THE WITNESS: Yes.

THE COURT: And that he only claimed a half interest, is that correct, that's what the statement says?

THE WITNESS: That's right.

THE COURT: All right. Then, did you look below and notice the mortgages which might affect the property, twenty-six thousand five hundred?

THE WITNESS: Yes.

THE COURT: Which is a half interest?

TURNER

THE WITNESS: Yes.

THE COURT: Did that mean anything to you?

THE WITNESS: Well, it meant that there was probably a fifty-three thousand dollar mortgage on the property, and that he was responsible for one-half of the mortgage.

THE COURT: And that fifty acres were valued at a market value of two hundred fifty thousand dollars, and the fifty acres he valued at two hundred ninety-three thousand, and the total mortgage on the fifty acres was sixty-two thousand five hundred -- now, there is some discrepancy there, isn't there between the amounts of the mortgage and the values of the property?

THE WITNESS: You very often get this.

THE COURT: Did you make any inquiry at all about this?

THE WITNESS: I asked him about the mortgage on the '72 statement. Yes, he said he got it from Matthew Zeigler, the farmer. They were up there, and the farmer took back the mortgage for roughly half the price or something like that.

TURNER

THE COURT: Sixty-two five?

THE WITNESS: Roughly something like that, yes.

THE COURT: Now, eight months later and twenty acres more, you have a lesser mortgage, you only have fifty-three thousand?

THE WITNESS: Well, Ed had told me a number of things, and I thought that there were two pieces of property involved between him and Leesport Gardens, and the acquisitions and transfers. I didn't understand them fully and didn't add them up that fully. I felt it would amount to twenty acres altogether.

THE COURT: At Leesport?

THE WITNESS: Yes. He owned some and Leesport owned some.

THE COURT: There is no statement to that effect here.

Eight months after the first statement was delivered to you twenty acres were delivered to the property. There is a lesser mortgage on it than there was originally -- all right, sir. Go ahead. Anything else, sir?

MR. ZWEIBEL: With Your Honor's indulgence, I would

TURNER

like to ask for a brief recess on the prayer that the deeds may come in. However, at this time, if I may just address myself to two matters.

REDIRECT EXAMINATION BY MR. ZWEIBEL:

Q I show you a document captioned Limited Partnership Agreement. Was that agreement furnished to you by the Adlmans?

A Yes, this appears to be a copy of the same document.

Q And when was this furnished to you, sir?

A Well, it was prior to the loan that went on -- I think it was prior to the first loan going on October 23, 1972. I believe it was then.

Q And this was furnished to you following a conversation had between yourself and Mr. Adlman?

A Yes.

Q So as to establish the interest of Mrs. Adlman in the property, the Leesport property?

A I don't know if it was specifically to do that. It was done because it was a new partnership. Ed furnished it to us to show that it had been newly formed, and that he was a general partner, and that it was a limited partnership.

TURNER

Then, of course, we regard the other people as being -- or the partners being in different capacities. If it had been five general partners. we would have asked for endorsements from all of them -- we wouldn't have asked for endorsements from them, particularly. We may have -- it is a normal type of thing.

MR. ZWEIBEL: May I offer this in evidence?

THE COURT: Any objection?

MRS. EISENBERG: Let me just take a look.

I have no objection to the deed being offered in evidence. Just read the date, please.

MR. ZWEIBEL: Limited Partnership Agreement, May the blank day of October, 1972.

THE WITNESS: That's the only date you will find on it. I am sorry, it is a little oversight I think we all made.

MR. ZWEIBEL: I don't see a date unless you can point it out in any other place in the agreement.

It is twelve pages, which includes a Schedule A.

[WHEREUPON LIMITED PARTNERSHIP AGREEMENT REFERRED TO WAS MARKED PLAINTIFF'S EXHIBIT X

TURNER

IN EVIDENCE, CONSISTING OF TWELVE PAGES.]

Q You testified earlier that at the time Mr. Adlman came to you for the initial loan, you told him you would require a financial statement from both himself and his wife showing what their assets were, is that right?

A Yes.

Q And he knew you were relying upon the veracity of those statements in making the loan?

A There is no question in my mind that he knew that.

Q And that was true in both instances, both the October loan and the June loan?

A Yes, that's correct.

Q And he knew that you wanted a representation both from him and his wife with respect to this, isn't that so?

A That's right.

Q And pursuant to that request, he submitted the Plaintiff's Exhibit I and Plaintiff's Exhibit III, which are the financial statements, personal financial statements for the October loan and for the June loan?

A Correct.

MR. ZWEIBEL: At this time, I would like to ask --

MRS. EISENBERG: [INTERPOSING] May I ask a few questions?

TURNER

THE COURT: Yes.

RECROSS-EXAMINATION BY MRS. EISENBERG:

Q You said the first statement in 1972, you did require Mr. Adlman to sign it, is that correct?

THE COURT: Yes, he so testified.

A Yes.

Q Did you also request Mrs. Adlman to sign it?

A No.

Q If you were relying on her statement, wouldn't it be -- wouldn't you want to have her signature on the document?

A I would have preferred to have it, but it was not the signature, per se, that was that important.

Now, you get into areas here where we do things when we make loans that you can't tie them down to the legal reasons, and this, that and the other. There is a sense of feeling a man out, will he sign that statement and things like this. This is all part of why you ask for these things.

As a matter of good procedure, get all the signatures you can, and I should have asked him. It was an oversight that I didn't ask him to sign the next statement when he came in next June.

TURNER

Q But getting back to it, then it didn't matter to you whether Lois signed the statement or not?

A If I had any questions about the validity of the assets or the value of them, or they being partly her assets, I might have; but Ed Adlman checked out all right.

Q Have you had any independent knowledge that Lois Adlman supplied this, either information or statement?

A No.

Q June 11th, when you wrote Mrs. Adlman reminding her that the guarantee was still on your books and that you were relying on the guarantee, if you were relying on her -- on the financial statement -- why did you write to her and say that you were also relying on past financial statements that had been submitted?

A You mean the year earlier, why didn't I tell her that?

Q No, no, no. Plaintiff's Exhibit VIII, which is dated June 11, 1973, addressed to Mrs. Lois Adlman --

A [INTERPOSING] I am not sure that I understood the question properly.

Q If you wished to remind Mrs. Adlman of her obligation and the reliance that you had given her, why did you not include a statement in your letter that you were also relying on any financial statements?

TURNER

A I see. Why didn't I say supported by your financial statement, or some such other thing, is that what you mean?

Q Yes. I see no evidence that you indicated at any time that you relied on her statement.

A I didn't think there was any need for this. I assumed that she would have some knowledge that her assets were disclosed one way or another to a bank. or at least if they are disclosed, she is responsible for the loan and she gave her guarantee -- I just didn't think it necessary to go pointing all of that out. I just wanted her to know that there were going to be more loans and that she was responsible for them.

Q Isn't it true that you really assumed that she had given you a statement and that she had made statements to you, and isn't it true --

A [INTERPOSING] No, no, no.

Q No?

A No.

Q Do you have anything other than an assumption to show me?

A I never said she made any statements to me.

Q Personal financial statements about her personal financial situation?

TURNER

A I didn't think that Mr. Adlman was working with his wife completely in the dark. She may not have known all of the details of everything -- if her guarantee is required, certainly she knows he is doing business with the bank, and certainly she knows that we are depending on her.

Q But isn't it true that if you relied on any statement at all, you relied on Mr. Adlman's statement and not Lois Adlman's statement?

A Oh, no. I didn't know how many of these assets might have been in Mrs. Adlman's name.

Q You never asked?

A No, I didn't ask specifically.

THE COURT: Did you ever ask what assets specifically were in the name of Lois, and which was in the name of Edward? Did you ever inquire in October when you made the first loan?

THE WITNESS: He said their home. I didn't inquire specifically if it was the two. However, since it was a joint statement and since I was getting a guarantee, I didn't think it was that necessary to know exactly how the home was registered.

There are stocks and bonds here.

TURNER

They might have been doing name things. The cash might have been -- it is an even dollar amount -- it might have been a savings account, Certificates of Deposit, something like that. It might have been in joint names.

Q It might also have been in Lois' name, and then you only had a signed statement from Edward.

A Well --

THE COURT: [INTERPOSING] I think you have pursued the point quite far enough.

MRS. EISENBERG: You are quite right.

MR. ZWEIBEL: Just one question.

FURTHER REDIRECT EXAMINATION BY MR. ZWEIBEL:

Q I understood you to say earlier when you asked for a financial statement, you wanted one of both Mr. Adlman and his wife?

A Yes.

Q And when it was furnished to you, you assumed it was with the authority and permission of his wife?

A No question about that, yes.

Q And that it was with the understanding of his wife?

A Yes.

TURNER

THE COURT: Supposing she had not given him the authority to make a joint financial statement, what would you say to that? I mean you are making suppositions here. It is just as easy to suppose she is a housewife and doesn't know a darned thing about business affairs and the procedures that are gone through in high finance and bank financing.

THE WITNESS: A lot of women know a lot more about what their family affairs are than they ever did before.

THE COURT: You can't take that as a general statement. My wife doesn't know a darned thing about what goes on. I don't tell her.

THE WITNESS: My wife does.

THE COURT: So now we have an even balance here, and an even balance is no good in a lawsuit. It has got to balance one side or the other.

MRS. EISENBERG: Did you know whether she was competent or incompetent?

THE WITNESS: No.

THE COURT: Let's not keep swiping from the sidelines. Let's call it quits sometime and give this man a little rest. I think we have

TURNER

gone long enough today anyway.

MR. ZWEIBEL: May we have a recess, Your Honor, in the prayer that the papers will get here?

MRS. EISENBERG: What are we trying to establish with these documents? Maybe we can agree on them.

MR. ZWEIBEL: I want to establish several things.

THE COURT: All you are going to establish, if you have a certified copy of a document, that there is such a document. Who are you going to question with respect to the documents?

MR. ZWEIBEL: I intended to question Mr. Adlman and possibly Mrs. Adlman, if her name appears, and then this gentleman's experience in the field, too; and I think that an amount paid by a party involved at a particular time is a factor to consider in arriving at what the reasonable value of something is.

THE COURT: Not necessarily, sir, but I will let you ask whatever questions you want.

MR. ZWEIBEL: So I say I may want to inquire of the three of them.

THE COURT: What do you want to do, Mrs. Eisenberg?

MRS. EISENBERG: I would like to renew my motion to

TURNER

dismiss on Lois Adlman. I think it is very clear, no matter whether these documents are produced or not, that they have not made a case under the Bankruptcy Act.

THE COURT: Well, that may be, but I think -- I will give him a chance to produce the documents. I think we have got to be fair here, and we have people all the way from Pennsylvania. It is an important thing to both sides. I think it is important that we have a chance to complete it properly.

Now, if you are available tomorrow afternoon, I have a calendar in the morning and in view of the fact we are using the testimony that Mr. Adlman gave before, it shouldn't take you too long.

This matter is adjourned until tomorrow afternoon at two o'clock.

[WHEREUPON THIS TRIAL WAS ADJOURNED AT 4:15 P.M. TO 2:00 P.M., MAY 1, 1975.]

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PLAINTIFF'S EXHIBITS

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EXHIBIT III IN EVIDENCE:	Financial Statement	Page 9	Line 23
EXHIBIT IV IN EVIDENCE:	Deed dated 8/9/72	Page 28	Line 25
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DEFENDANT'S EXHIBITS

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CERTIFICATION

STATE OF NEW YORK)
) ss.
COUNTY OF SUFFOLK)

I, SHEILA PARISER, a Notary Public in and for the State of New York, do hereby certify:

THAT this is a true and accurate record of the testimony given at a Trial held on the 30th day of April, 1975, before the HONORABLE BORIS RADOYEVICH, Bankruptcy Judge, as stenographically recorded by me and transcribed under my direction.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of May, 1975.

SHEILA PARISER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re: LOIS ADLMAN,	:	
Bankrupt.	:	No. 74 B 386
BANK OF PENNSYLVANIA,	:	
Plaintiff.	:	
v.	:	
LOIS ADLMAN,	:	
Defendant.	:	

The Bank of Pennsylvania, hereafter "Bank", a creditor of the bankrupt, commenced an action by filing its complaint, on 29th November, 1974, which contains three numbered "Counts" and which, among other things, requests this Court to deny a discharge to the bankrupt. A hearing was held on 11th March, 1975, on the bankrupt's motion to dismiss the complaint as not stating any grounds for relief under either Section 14 or Section 17 of the Bankruptcy Act. This Court indicated that it would dismiss "Count One" as not stating any grounds for relief under the Act. The action regularly came on for trial on 30th April, 1975, and continued on 1st May, 1975. The plaintiff appeared by Crowe, McCoy, Agoglia & Zweibel, Esqs., Morris Zweibel, Esq., of counsel, and the defendant appeared in person and by her attorneys, Goldman, Horowitz & Cherno, Esqs., Dorothy Eisenberg,

Esq., of counsel. Upon the testimony produced before this Court, the Court makes the following:

Findings of Fact

1. Lois Adlman and Edward C. Adlman her husband filed voluntary petitions in bankruptcy on 22nd March, 1974, and were, on that date, adjudicated bankrupts.

2. Edward C. Adlman, bankrupt's husband, was engaged, during 1972 and 1973, in the purchase and development of real property in Pennsylvania and was a general partner in the limited partnership known as Leesport Gardens Company, hereafter Leesport.

3. Under the partnership agreement of Leesport, Edward C. Adlman, as a general partner, owned a 33 1/3% interest, and Lois Adlman, this bankrupt, as a limited partner, owned a 15% interest in such partnership. (See Plaintiff's Exhibit 10).

4. That in connection with a certain loan made 23 October, 1972, which was subsequently repaid by Leesport, the bankrupt and her husband, on or about 13 October, 1972, executed and delivered to the Bank of Pennsylvania a continuing guaranty of any loans the Bank might make to Leesport. (See Plaintiff's Exhibit 7).

5. That thereafter Leesport desired to borrow $25,000.00 from the Bank, and, in connection with such application, on 11th June, 1973, Edward C. Adlman,

delivered a financial statement to the Bank which purported to be a statement of the personal assets of Edward C. and Lois Adlman as of 15 March, 1973. Such statement, among other things, listed the residence at Sands Point, N.Y. as an asset valued at $167,000.00, subject to a mortgage for $59,860.00. (See Plaintiff's Exhibit 3).

6. That title to the residence at Sands Point, N.Y., purchased in the names of Edward C. Adlman and Lois Adlman, his wife, in August, 1972, was in the sole name of Lois Adlman, from 26 September, 1972, until conveyed to David and Dorothy Adlman by deed dated 12 October, 1973.

7. The residence at Sands Point, N.Y. was conveyed to David Adlman and Dorothy Adlman, his wife, uncle and aunt of Edward C. Adlman, on 12th October, 1973, at a price of $125,000.00, a portion of which was paid by taking title subject to an existing mortgage on which there was due approximately $59,000.00, and the balance of the purchase price was paid to Lois Adlman by checks at the closing on 12th October, 1973.

8. That since 12th October, 1973, when the Sands Point N.Y. premises were conveyed to David and Dorothy Adlman, Lois Adlman and Edward C. Adlman, her husband, have continued to reside in such premises under a written lease, dated 1st October, 1973. (Plaintiff's

Exhibit 9).

9. On 6 March, 1973, Willard D. Ramsey, Realtor-Appraiser, of Fry Associates, Inc., appraised the 151.68 acres of land in the township of Spring, Berks County, Pa., at a value of $332,200.00 and that such premises were conveyed to Edward C. Adlman by deed dated 22 March, 1973. (See Defendant's Exhibit C and Plaintiff's Exhibit 15).

10. The Leesport, Pa. property, described as the 70.7 acre parcel, was conveyed to Leesport Gardens Company on 4th October, 1972, in two parcels. One of such parcels containing approximately 20 acres, was conveyed by Price, at a consideration of $100,000.00 and the 50.696 acre parcel was conveyed by Edward C. Adlman at a stated consideration of $75,000.00.

11. Edward C. Adlman testified that on 11th June, 1973, when the financial statement dated 15 March, 1973, was given to the Bank, he advised Mr. Turner that the values of the real properties were not accurate as of 11th June, 1973, and that his 1/2 interest in the Leesport property should only be considered as valued at $40,000.00 and that his interest in the Country Club Apartments should be discounted or valued at zero. (S.M. 4/20/75 p.p. 10, 11, 13, 15, 52, 53).

12. That John E. Turner, the Bank's officer, testified that the pencil notations on Plaintiff's

Exhibit 3 were made by him but that such figures were not written on 11 June, 1973, as claimed by Mr. Adlman.

13. Edward C. Adlman testified that the pencil figures found on Plaintiff's Exhibit 3 were placed upon such statement in his presence, by Mr. Turner, on 11th June, 1973, at the time he delivered the statement to the Bank.

14. Edward C. Adlman and Lois Adlman did not on 11th June, 1973, overstate their assets and understate their liabilities with any intention to deceive this plaintiff.

15. That the"actual consideration paid for this conveyance" as recited in the Pennsylvania deeds introduced in evidence by the plaintiff is not necessarily the true market value of the property conveyed.

16. The loan to Leesport was based mainly upon the personal relationship which had been established between the Bank's officers and Edward C. Adlman, upon the Bank's investigation of the credit and references supplied by Edward C. Adlman, and upon the Bank's belief in Edward C. Adlman.

17. The Bank was not deceived by any statements contained in the financial statement dated 15 March, 1973.

18. That in delivering the financial statement dated 15 March, 1973, to the Bank, this defendant and her husband, Edward C. Adlman, had no intention to deceive

the Bank as to the value of their joint assets on 11th June, 1973.

19. Lois Adlman drew checks on her checking account in the National Bank of North America as follows:-

1. Payee-Canada Life

10/4/73-Repayment of loan policy- #1229860	$12,453.50
10/4/73-Premium for policy- #1229860	$ 1,213.00

2. Payee-Guardian Life Insurance Co.

10/4/73-Loan on #1091509-	$12,311.50
10/4/73-Loan on #1135348-	$11,025.50
10/4/73-Premium #1091509-	$ 1,300.00
10/4/73-Premium #1135348-	$ 1,391.00

3. Payee-Mutual Benefit Life

10/12/73-Return of Loan #4177356-	$ 9,947.01
10/12/73-Return of Loan #4171506-	$ 6,915.89
10/12/73-Premium 9/18/73-	$ 595.07
10/12/73-Premium 10/25/73-	$ 869.90
10/12/73-Premium 12/18/73-	$ 1,819.25

4. Payee-Guardian Life Insurance Co. of America

10/19/73- "CT-47767" - See Plaintiff's Exhibit 5.	$ 475.00

20. This Court takes judicial notice of the petition and schedules in bankruptcy, verified by Lois Adlman on 20th March, 1974, and filed on 22 March, 1974, which show total liabilities of $4,091725.20 and no assets other than certain life insurance policies having a face value of $275,000.00 which are claimed as exempt property under the Insurance Law of the State of New York.

21. In September, 1973, Edward C. Adlman was

not bringing in his usual amounts for household expenses and the defendant was short of expense money to run the house. (S.M. 4/30/75 p.68, 88).

22. In October, 1973, Edward C. Adlman had little or no income (S.M. 4/30/75 p.61), he was under tremendous financial pressure (S.M. 4/30/75 p. 83-85) and wanted to sell the Sands Point house because he felt it would be the wisest thing to do at that particular time.

23. That while the defendant was a housewife and took no part in the management or operation of the various real estate ventures in which her husband had been involved, the defendant did execute guarantees of loans which had been made to her husband on his various real property or business ventures.

24. This defendant's liabilities exceeded her assets by $4,091,725.20 on 20th March, 1974, when she executed the petition in bankruptcy herein and since she has verified in her statement of affairs that she made no transfers and had no losses in the year preceding the filing of her petition in bankruptcy, she was insolvent in October, 1973, approximately 5 1/2 months previous to the filing of the petition. (See Items 12 and 14 of Statement of Affairs and Summary of Debts and Property).

25. On 14th June, 1973, the Bank loaned Leesport $25,000.00 and that there is past due and unpaid to the Bank the said sum of $25,000.00, with interest,

which this defendant is obligated to pay under her guaranty dated 13th October, 1972. (See Plaintiff's Exhibits 2 and 7 of 4/30/75).

26. Under Section 166 of the Insurance Law of the State of New York, the various policies of insurance, on the life of Edward C. Adlman and on the life of this defendant's father, which were owned by this defendant or in which she was the designated beneficiary, constituted exempt assets.

27. That this bankrupt in October, 1973, repaid loans which had been made on the policies owned by her or in which she was named as beneficiary to the extent of $52,653.40 and that in such month she paid premiums on such policies amounting to $7,663.22.

28. That among the premium payments made by this defendant were two payments to Mutual Benefit Life of $869.90 and $1819.25 made on 12th October, 1973, for premiums due 25th October, 1973 and 18 December, 1973.

29. That the house at Sands Point, N.Y. was sold to David and Dorothy Adlman, aunt and uncle of Edward C. Adlman, on 12th October, 1973, because Edward C. Adlman felt it was the wisest thing to do at that time. (S.M. 4/30/74 p. 83).

30. That the defendant sold the Sands Point house, which she continues to occupy with her husband, to David and Dorothy Adlman, on October 12, 1973, repaid

loans on various policies of life insurance, and paid premiums, some in advance of their due dates, in order to secure protection for herself and her children. (S.M. 4/30/75 p.83-85).

31. That this defendant sold the Sands Point house and repaid loans on various policies of life insurance and paid premiums on such policies, some in advance of their due dates, for the purpose of removing such assets from the reach of her creditors.

32. That this defendant transferred her Sands Point house, repaid loans on policies of insurance amounting to $52,653.40 and paid premiums on such policies amounting to $7,663.22 with intent to hinder delay and to defraud her creditors.

Conclusions of Law

1. The "First Count" of the plaintiff's complaint objecting to the discharge of the bankrupt does not state any ground for relief under the Bankruptcy Act and must be dismissed.

2. The "Second Count" of the plaintiff's complaint which purports to be based on Section 14c (3) or Section 17a (2) is not supported by the testimony offered in that there is insufficient proof to find that the defendant was engaged in business or that the financial statement was published with the intent to deceive, and accordingly such "Second Count" must be dismissed.

3. The proof does establish that this defendant did, at a time subsequent to the first day of the twelve months preceding the filing of the petition in bankruptcy, transfer her real property, and repay loans on policies of insurance, with the intent to hinder, delay or defraud her creditors, all as specified in Section 14c (4) of the Bankruptcy Act.

4. That a discharge in bankruptcy shall be denied to this bankrupt.

Memorandum

This Court is satisfied that the plaintiff has failed to make out a case under Section 14(c)(3) or under Section 17(a)(2) of the Bankruptcy Act. As for Section 14(c)(3) it is abundently clear that the defendant is a housewife and that she was not engaged in any business. Her husband had put her in as a limited partner in Leesport but she did nothing other than sign the partnership certificate and go on the guaranty of the Bank's loan. As her husband testified, she was in Leesport only as a "dummy." Since she was not engaged in business the claim of a "false financial statement" could only affect this bankrupt under Section 17(a)(2) of the Act. The plaintiff attempted to show that the financial statement dated 15 March, 1973, was false and that the assets were inflated and the liabilities put at a minimum in order to deceive the Bank into making the loan. This Court is satisfied that Edward C. Adlman made a satisfactory explanation of the figures given on the joint financial statement and that the recollection of Mr. Turner, an officer of the Bank, may be at fault when he recites his recollection of the time the penciled figures were placed on the financial statement. Edward C. Adlman stated that he discussed the figures with Mr. Turner on 11th June, 1973, when he delivered the statement to the Bank and that he explained to Mr. Turner that the

15 March, 1973, figures were not accurate as of 11th June, 1973. He stated that he told Mr. Turner that his 1/2 interest in the Leesport property should only be valued at $40,000.00 and that his interest in the Country Club Apartments should be discounted or valued at zero. Those are the pencil notations found on the financial statement and Mr. Turner admits he placed such notations on the statement. However, Mr. Turner states the pencil notations were made in September or October of 1973 and not on 11th June, 1973. There is a sharp conflict of testimony. The testimony of Edward C. Adlman is direct and unequivocal to the effect that he discussed the figures on the statement with Mr. Turner on 11th June, 1973, when he delivered the statement to Mr. Turner. Mr. Turner, although admitting the pencil notations were made by him, was not sure as to when he made them but guessed they were made in September or October, 1973, after the loan was made. The conflict, is resolved in favor of the bankrupt. In view of the testimony offered by the plaintiff this Court would be most reluctant to make a finding that the Bank relied upon the statement. This Court refuses to find, on the evidence offered, that the Bank was deceived in any way. It is incumbent upon the plaintiff to prove not only that the statement was false but also that it was offered or given with intent to deceive and that the Bank was deceived. This

the plaintiff has failed to do.

The "Third Count" of this plaintiff's complaint contains many allegations. Some of the allegations may be pertinent to a complaint under Section 67 of the Act but have no place in a complaint under Section 14 and 17 of the Act. It would seem that such a pleading should be the subject of a motion to clarify by separately stating and numbering the plaintiff's claims. A motion to dismiss for failure to state a claim is not the proper attack for if the pleading sets forth any claim such motion must be denied.

The proofs offered by the plaintiff show, to the satisfaction of this Court that Edward C. Adlman, the bankrupt's husband and principal source of support, was in financial difficulties in September, 1973, and was not bringing in any money. The husband had had a history of illness and it is evident that this bankrupt and her husband embarked upon a course of conduct calculated to protect the bankrupt's future by removing any assets such bankrupt might have from the reach of her creditors. This could be accomplished by the sale of the house to her husband's uncle and aunt and by placing any cash assets the bankrupt might have into policies of insurance which are exempt from creditors under the Insurance Law of the State of New York and the Bankruptcy Act. The checks issued by this bankrupt

on 4th October, 1973, to Canada Life and Guardian Life Insurance Company total $39,694.50. On 12 October, 1973, the bankrupt issued checks to Mutual Benefit Life in the total amount of $20,147.12, and thereafter on 19th October, 1973, issued a further check to Guardian Life for $475.00. The testimony in this case indicates that the bankrupt transferred her house on 12 October, 1973, to David and Dorothy Adlman for the sum of $125,000.00 and that a portion of such alleged purchase price was represented by the transfer being subject to a mortgage of approximately $60,000.00. The parties did not develop the financial transaction on the record and the closing statement was never introduced in evidence. However, from such testimony it would appear that this bankrupt disbursed almost $40,000.00 of her funds to the insurance companies before the house transaction was closed and that on the same day that the closing took place she drew checks for $20,147.12 to two insurance companies. No attempt was made to develop the disposition by the bankrupt of the money she allegedly received on 12th October, 1973, from the sale of the house and it is evident from the schedules filed that such funds were disposed of by the bankrupt.

Here the bankrupt was under no obligation to repay the alleged "loans" on the policies of life insurance. Such "loans" are considered advancements of

the sums payable under the policy and if not repaid are merely deducted from the amount payable when the policy, by its provisions, matures. U.S. vs Sullivan 333 F. 2nd 100, 112, 113. There can be no argument with the fact that the repayment of the "loan" did not enhance the bankrupt's estate available for her creditors. The repayment of the loans and the advance payment of premiums was nothing more than a voluntary payment which had for its plain intent the removal of the assets involved from the reach of this bankrupt's creditors. This Court finds as a matter of fact that the repayment of such policy "loans" was made with actual intent to hinder, delay or defraud the bankrupt's creditors. See In re Hirsch (D.C.N.Y.) 4 F. Supp. 708; In re Julius Bro. 217 F. 3. It was plainly her intention to remove such funds from the reach of her creditors by placing the same in an exempt catagory. That this bankrupt was insolvent in October, 1973 is evident. Only five months and ten days after the last transfer of funds to the insurance companies the bankrupt files a petition in which she schedules liabilities of $4,091,725.20 and no assets. There can be no doubt that the actions of this bankrupt were calculated to hinder, delay or defraud her creditors!

Section 166 of the Insurance Law creates the exemption for insurance policies. Such Section contains,

however, an exception which denies exempt status to "the amount of premium or other consideration paid with actual intent to defraud creditors."

Under Section 276 of the Debtor and Creditor Law every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay or defraud either present or future creditors, is fraudulent as to both present and future creditors.

See Klein vs Rossi (DCNY 1966) 251 F. Supp. 1;
Glassman vs Glassman 309 N.Y. 436;
Altman vs Finkel 268 AD 666, 52 NYS 2nd 634, reargument denied 269 AD 745, 54 NYS 2nd 707, aff'd. 295 N.Y. 651;
104 Amity St. Corp. vs Fed. Elect. Co. Inc. 231 AD 849, 246 NYS 831;
Matthews vs Schusheim 36 Misc. 2nd 918, 235 NYS 973,
Reversed on other grounds 18 AD 2nd 719, 236 NYS 2nd 407,
Appeal dismissed 13 NY 2nd 756.

This bankrupt's discharge shall be DENIED.

Settle judgment on notice.

Dated: Westbury, N.Y.
14th August, 1975

Boris Radoyevich
Bankruptcy Judge

BEST COPY AVAILABLE

Judgement and Order of Bankruptcy Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

In re: LOIS ADLMAN,

Bankrupt, No. 74 B 386

BANK OF PENNSYLVANIA,

Plaintiff,

v.

LOIS ADLMAN,

Defendant.

- -x

JUDGMENT AND ORDER

This court, having made and entered its findings of fact and conclusions of law,

It appearing that LOIS ADLMAN of Sands Point, in the County of Nassau, State of New York was duly adjudged a bankrupt on a petition filed by her on the 22nd day of March, 1974,

It further appearing that after due notice by mail, objections to the discharge of said bankrupt were filed by the BANK OF PENNSYLVANIA, a creditor, and after due notice by mail, said objections were heard and the Third Count of the specifica-

tion of objections was sustained, and the First and Second Counts of said specifications were not sustained,

IT IS ORDERED, ADJUDGED AND DECREED, that the discharge of said LOIS ADLMAN be and it hereby is denied.

BORIS RADOYEVICH
Bankruptcy Judge

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ROBERT LA GRASSA, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 62-20 60th RD MASPETH, N.Y.

That on the 5th day of MARCH, 1976, deponent personally served the within APPENDIX upon the attorneys designated below who represent the indicated parties in this action and at the addresses below stated which are those that have been designated by said attorneys for that purpose.

~~By leaving true copies of same with a duly authorized person at their designated office.~~

By depositing 1 true ~~copies~~ of same enclosed in a postpaid properly addressed wrapper, in the post office or official depository under the exclusive care and custody of the United Stated post office department within the State of New York.

Names af attorneys served, together with the names of the clients represented and the attorneys' designated addresses.

CROWE, MCCOY AGOGLIA + ZWEIBEL
ATTORNEYS FOR CREDITOR BANK OF PENNSYLVANIA
80 EAST OLD COUNTRY RD.
MINEOLA, N.Y. 11501

Robert La Grassa

Sworn to before me this
5th day of March, 1976

Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 1977